12-14-87
Vol. 52 No. 239
Pages 47365-47544

Federal Register

Monday
December 14, 1987

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Proclamation 5752 of December 10, 1987

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1987

By the President of the United States of America

A Proclamation

The Constitution whose Bicentennial we celebrate this year begins, "We the People," and thus tells Americans and all the world that we hold the individual as sovereign, not the government or any other political entity. The Bill of Rights, added to the Constitution in 1791, specifies individual liberties and adds that powers "not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Founders of our country believed the rights of the individual are God-given, not originating from or granted by the state. Their timeless vision of individual liberties for all people is why we pause each December to express thanks for our heritage and to renew our commitment to the vital cause of human rights around the globe. We also celebrate the adoption of the Universal Declaration of Human Rights, which set human rights standards for all nations.

Tragically, governments in many lands deny this vision. Some make elaborate claims that citizens under their rule enjoy human rights and even offer illusory guarantees of those rights—but then reveal their absence through lack of due process, free elections, or freedom of religion, expression, and assembly. Their constitutions often declare openly that citizens' rights are subordinate to the interests of the state. Even if words look good on paper, the absence of structural safeguards against abuse of power means that freedoms may be taken away as easily as they are allowed. In countries where monopoly power rests with a single group or political entity, the scope for human liberty is narrow indeed.

These states pose the greatest threat to liberty, not only because under them people are denied the exercise of the most fundamental freedoms, but because they pose external as well as internal dangers. Unlimited power, exercised in the name of universalist ideologies, often tries to extend its control beyond borders, denying other peoples their human rights and self-determination.

Standing against these dangers are those people the world over who, undaunted by tremendous odds and great personal risk, continue to press for individual rights and freedoms. Their courageous struggle for human dignity is a triumph in itself, but the United States pledges continuing support to their efforts on behalf of human rights, fundamental freedoms, and democracy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1987, as Human Rights Day and December 15, 1987, as Bill of Rights Day, and I call upon all Americans to observe the week beginning December 10, 1987, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-28825
Filed 12-11-87; 11:01 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-143]

Peach Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Los Angeles County, California, because of the peach fruit fly, and restricting the interstate movement of regulated articles from the quarantined area. This emergency action is necessary to prevent the artificial spread of the peach fruit fly to noninfested areas of the United States.

DATES: This interim rule was effective on December 8, 1987. Consideration will be given only to comments postmarked or received on or before February 12, 1988.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-143. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Homes, Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding "Peach Fruit Fly" regulations (referred to below as the regulations). These regulations quarantine part of Los Angeles County, California, because of the peach fruit fly, and restrict the interstate movement of regulated articles from the quarantined area.

The peach fruit fly, *Dacus zonatus* (Saunders), is a very destructive pest of tropical and subtropical fruits, including mangos, guavas, tomatoes, apples, peaches, and loquats. This pest can cause serious economic losses by lowering the yield and quality of these fruits. Heavy infestations can result in complete loss of these crops.

Recent trapping surveys near Westchester, California, have established that part of Los Angeles County is infested with the peach fruit fly.

Officials of the United States Department of Agriculture (USDA), or the Department and state and county agencies in California have begun an intensive survey and eradication program in the infested area. Also, as explained below, California had restricted the intrastate movement of certain articles from the quarantined area to prevent the artificial spread of the peach fruit fly within California. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the artificial spread of the peach fruit fly to noninfested areas in other states. This interim rule establishes those Federal regulations, which are described below.

Section 301.96 Prohibitions.

This section prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Section 301.96-1 Definitions.

This section defines the following terms: "Administrator," "Certificate," "Compliance Agreement," "Department Permit," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved," "Peach fruit fly," "Person," "Plant Protection and Quarantine," "Quarantined area," "Regulated article," and "State."

Section 301.96-2 Regulated articles.

Certain articles present a significant risk of spreading the peach fruit fly if they are moved from quarantined areas without restriction. We call these articles regulated articles. This section designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, and berries. In addition, this section allows designation of any other product, article, or means of conveyance as a regulated article, if an inspector determines that it presents a risk of spread of the peach fruit fly and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations. This last provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading peach fruit fly (e.g., a truck with peach fruit fly pupae in cracks in the floorboards) to regulate the product, article, or means of conveyance immediately, by informing the person in possession of the product, article, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, or dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles, since the peach fruit fly cannot survive under those conditions.

Section 301.96-3 Quarantined areas.

This section states that the following areas will be listed as quarantined areas: (1) Each state in which an infestation of peach fruit fly exists, or (2) and 81-square-mile portion of a state surrounding the focal point of a peach fruit fly infestation. The Administrator may establish boundaries encompassing more or less than an 81-square-mile area, when he or she determines it is necessary to do so to establish readily identifiable boundaries.

This section also provides that we will designate less than an entire state as a quarantined area only if we determine that: (1) The state has adopted and is enforcing restrictions on the intrastate movement of regulated articles, and the restrictions are substantially the same as those imposed by the regulations on the interstate movement of those articles; and (2) quarantining less than the entire state

will prevent the interstate spread of the peach fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we have quarantined the following area of Los Angeles County:

Los Angeles County: That portion of the county bounded by a line drawn as follows: beginning at the point where Moss Avenue intersects the Pacific Ocean coastline; then northeasterly along this avenue to its intersection with State Highway 1; then northeasterly along this highway to its intersection with U.S. Highway 10; then easterly along this highway to its intersection with Broadway; then south along Broadway to its intersection with Imperial Highway; then west along this highway to its intersection with Western Avenue; then south along this avenue to its intersection with Compton Avenue; then west along this avenue to its intersection with Marine Avenue; then westerly along Marine Avenue to its intersection with The Strand; then due west along an imaginary line from that intersection to the intersection of the imaginary line with the Pacific Ocean coastline; then northwesterly along this coastline to the point of beginning.

We have not quarantined the entire state of California because the peach fruit fly has not been found in other areas of the state, and because California has adopted and is enforcing restrictions on the intrastate movement of regulated articles, and the restrictions are substantially the same as those imposed by the regulations on the interstate movement of those articles.

Section 301.96–3 also provides that we may temporarily quarantine an area without publication in the **Federal Register**, if there is a reason to designate the area as a quarantined area in accordance with this section. After we give the owner or person in possession of the area written notice of the quarantine, interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the artificial spread of the peach fruit fly during the time between discovery of the pest and the time a document quarantining the area can be published in the **Federal Register.**

Section 301.96–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

This section requires most regulated articles moved interstate from quarantined areas to be accompanied by a certificate or a limited permit. The only exceptions are certain articles that move into the quarantined area from outside the quarantined area or that are moved by the Department for experimental or scientific purposes.

Except for articles moved by the Department, only articles that are moved into the quarantined area from outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by peach fruit flies. In most cases, except as explained below regarding Los Angeles International Airport, California, the regulated articles must also move directly through the quarantined area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs) and the regulated articles must not be unpacked or unloaded in the quarantined area.

We are including special provisions for regulated articles that transit Los Angeles International Airport as air cargo or as meals for aircraft passengers and crews. If these articles are moved into the quarantined area from outside the quarantined area and are enclosed or covered as specified above, they may be moved interstate without a certificate or limited permit, and not be subject to the regulations regarding stopping, unpacking, and unloading. Although Los Angeles International Airport is in the quarantined area, with proper covering or enclosure, regulated articles that are moved into the quarantined area from outside the quarantined area and that move as air cargo on meals through the airport can be moved interstate without a significant risk of spreading the peach fruit fly.

Also, the Department may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a Departmental permit issued by the Administrator, under conditions that prevent the spread of the peach fruit fly.

Section 301.96–5 Issuance and cancellation of certificates and limited permits.

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of peach fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.96–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.96–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of peach fruit fly, has been treated under the supervision of an inspector, who must be present during the treatment, in accordance with § 301.96–10, or comes from a premises of origin that is free of peach fruit fly and the regulated article has not been moved from the premises of origin since September 22, 1987; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of peach fruit fly under 7 U.S.C. 150dd; and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 1) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote (number 2) that explains that the Secretary of Agriculture can, under 7 U.S.C. 150dd, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that he or she has reason to believe are infested or infected by or contain plant pests.

Section 301.96–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of peach fruit fly.

Section 301.96–5(c) allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.96–5 (a) or (b).

Also, § 301.96–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or

limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.96–6 Compliance agreement and cancellation.

Section 301.96–6 provides for the issuance and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in interstate shipments of regulated articles from quarantined areas. A compliance agreement will be issued when an inspector has determined that the person requesting the compliance agreement is knowledgeable regarding the requirements of Subpart 301.96, and the person has agreed to comply with those requirements. This section contains a footnote (number 3) to explain how compliance agreements may be arranged.

Section 301.96–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact.

Section 301.96–7 Assembly and inspection of regulated articles.

Section 301.96–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.96–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated article must be assembled wherever and in whatever way the inspector designates as necessary to comply with the regulations.

Section 301.96–8 Attachment and inspection of regulated articles.

Section 301.96–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill. Further, this section requires that the carrier must furnish the certificate or limited permit to the consignee at the destination of the regulated article.

These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.96–9 Costs and charges.

Section 301.96–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the quarantine and regulations in Subpart 301.96 are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays).

Section 301.96–10 Treatments.

Section 301.96–10 sets forth a treatment schedule that qualifies soil for the issuance of a certificate as provided in § 301.93–5. Based on research by the Agricultural Research Service, it has been determined that this treatment would destroy the peach fruit fly.

The treatment schedule for soil in § 301.96–10 is as follows:

Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.96–2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area, with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the peach fruit fly could be spread artifically to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register.** Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the quarantined area, there are fewer than 115 small entities that may be affected, including 45 nurseries, 50 mobile fruit vendors, eight fruit stands, and eight companies catering to airlines. Except for the nurseries and caterers, most of the sales by the entities are local intrastate and will not be affected by the quarantine. Effects on the nurseries will be minimized by the availability of soil treatment under the regulations. Effects on the caterers will be negligible, because virtually all of their food products intended for interstate movement originate outside the quarantined area and, properly handled, will be permitted to be moved onto aircraft without a certificate or limited permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local

officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Peach fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is revised to read as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Peach Fruit Fly" to read as follows:

Subpart—Peach Fruit Fly

Sec.

Subpart—Peach Fruit Fly

§ 301.96 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.

§ 301.96–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any employee or the United States Department of Agriculture to whom the Administrator has delegated authority to act in his or her stead.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document has met the criteria in § 301.96–5(a) of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person who moves regulated articles interstate, wherein the person agrees to comply with this subpart and any conditions imposed under it.

Departmental permit. A document issued by the Administrator, in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement in accordance with § 301.96–4(d) of this subpart.

Infestation. A finding by an inspector or a state or county cooperating agency within an area of less than 1 square mile and within the same trap servicing period (7 to 10 days), of any of the following: (1) One peach fruit fly larva, (2) one peach fruit fly pupa, (3) one mated adult female peach fruit fly, (4) more than five adult peach fruit flies, or (5) both an unmated adult female peach fruit fly and an adult male peach fruit fly.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.96–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved. Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

Peach fruit fly. The insect known as peach fruit fly, *Dacus zonatus* (Saunders), in any stage of development.

Person. Any association, company corporation, firm, individual, joint stock company, partnership, or society, or any other legal entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any state, or any portion of a state, listed in § 301.96–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.96–3(b) of this subpart.

Regulated article. Any article listed in § 301.96–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.96–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

§ 301.96–2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Apple (*Malus sylvestris*)
Avocado (*Persea americana*)
Bitter gourd (*Momordica charantia*)
Citrus (*Citrus spp.*) (except smooth-skinned lemons of commerce)
Common guava (*Psidium guajava*)
Common quince (*Cydonia oblonga*)
Custard apple (*Annona reticulata*)
Date (*Phoenix dactylifera*)
Eggplant (*Solanum melongena*)
Fig (*Ficus carica*)
Grape (*Vitis spp.*)
Hibiscus (*Hibiscus spp.*)
Ivy gourd (*Coccinia grandis*)
Jujube (*Zizyphus jujuba*)
Kumquat (*Fortunella japonica*)
Loquat (*Eriobotrya japonica*)
Mango (*Mangifera indica*)
Melons (*Cucumis spp.*)
Okra (*Abelmoschus esculentus*)
Papaya (*Carica papaya*)
Pear (*Pyrus communis*)
Pepper, sweet (*Capsicum frutescens var. grossum*)
Persimmon, Japanese (*Diospyrus kaki*)
Phalsa (*Grewia spp.*)
Pomegranate (*Punica granatum*)
Sand Pear (*Pyrus pyrifolia*)
Sapote (*Pouteria sapota*)
Stone fruits (*Prunus spp.*)
Sugar apple (*Annona squamosa*)
Tomato (*Lycopersicon esculentum*)
Tropical almond (*Terminalia catappa*)
Walnut, with husk (*Juglans spp.*)
Watermelon (*Citrullus lanatus*)
White-flowered gourd (*Lagenaria spp.*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below −17.8° C. (0° F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance, not listed in paragraph (a) or (b) of this section, that an inspector determines presents a risk of spread of the peach fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.96–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section

each state in which a peach fruit fly infestation exists; or an 81-square-mile portion of a state surrounding the focal point of a peach fruit fly infestation. The Administrator may establish boundaries encompassing more or less than an 81-square-mile area, when he or she determines it is necessary to do so to establish readily identifiable boundaries. Less than an entire state will be listed as a quarantined area only if the Administrator determines that:

(1) The state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire state as a quarantined area will prevent the interstate spread of the peach fruit fly.

(b) The Administrator may designate any nonquarantined area in a state as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing a quarantined area. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County: That portion of the county bounded by a line drawn as follows: Beginning at the point where Moss Avenue intersects the Pacific Ocean coastline; then northeasterly along this avenue to its intersection with State Highway 1; then northeasterly along this highway to its intersection with U.S. Highway 10; then easterly along this highway to its intersection with Broadway; then south along Braodway to its intersection with Imperial Highway; then west along this highway to its intersection with Western Avenue; then south along this avenue to its intersection with Compton Avenue; then west along this avenue to its intersection with Marine Avenue; then westerly along this avenue to its intersection with The Strand; then due west along an imaginary line from that intersection to the intersection of the imaginary line with the Pacific Ocean coastline; then northwesterly along this coastline to the point of beginning.

§ 301.96-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.96-5 and 301.96-8 of this subpart.

(b) Without a certificate or limited permit, if:

(1) The regulated article is moving as air cargo or as a meal for aircraft passengers or crew, and it is transiting Los Angeles International Airport, California;

(2) The regulated article was moved into the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by peach fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(3) The point of origin of the regulated article is indicated on a waybill accompanying the regulated article.

(c) Without a certificate or limited permit, if:

(1) The regulated article was moved into the quarantined area and is moved through (without stopping except for refueling, rest stops, or emergency repairs, or for traffic conditions such as traffic lights and stop signs) the quarantined area in an enclosed vehicle, or is completely enclosed by a covering adequate to prevent access by peach fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill accompanying the regulated article, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(d) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of peach fruit fly and,

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if it is not in a container.

§ 301.96-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector [1] will issue a certificate for the interstate movement of a regulated article if the inspector:

(1) (i) Determines that the regulated article has been treated under the supervision of an inspector, who must be present during the treatment, in accordance with § 301.96-10 of this subpart; or

(ii) Determines, based on inspection of the premises of origin, that the premises of origin are free from peach fruit flies and the regulated article has not moved from the premises of origin since September 22, 1987.

(iii) Determines, based on inspection of the regulated article, that it is free of peach fruit fly; and

(2) Determines that the regulated article is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of the peach fruit fly;[2] and

(3) Determines that the regulated article is eligible for unrestricted interstate movement under all other federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article if the inspector:

(1) Determines that the regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the peach fruit fly because the peach fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) Determines that the regulated article is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of the peach fruit fly;[2] and

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[1] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from National Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[2] Title 7 U.S.C. 150dd provides that the Secretary of Agriculture, or his or her delegates, may, under certain conditions, seize, quarantine, treat, destroy, or apply other remedial measures to, articles which he or she has reason to believe are infested or infected by or contain plant pests.

(3) Determines that the regulated article is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or a person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if the inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when the inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing within 20 days of oral notification of the withdrawal. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. Within 60 days after receipt of the appeal, or as soon as practicable after a hearing, if a hearing is held, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.96-6 Compliance agreement and cancellation.

(a) Any person who moves regulated articles interstate may enter into a compliance agreement when an inspector determines that the person understands this subpart.[3]

(b) Any compliance agreement may be cancelled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. Within 60 days after receipt of the appeal, or as soon as practicable after the hearing, if a hearing is held, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.96-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.96-5(c) of this subpart) who desires to move interstate a regulated article accompanied by a certificate or limited permit must, at least 48 hours before the desired interstate movement, request an inspector [4] to issue the certificate or limited permit.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.96-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article, attached to the regulated article itself if it is not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificte, limited permit, or waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.96-9 Costs and charges.

The services of the inspector between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.96-10 Treatments.

Treatment for soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.96-2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Done at Washington, DC, this 8th day of December 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-28584 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 319

[Docket No. 87-141]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending "Subpart—Fruits and Vegetables" by removing provisions that allowed mangoes to be fumigated with ethylene dibromide (EDB) as a condition-of-entry treatment before being imported into the United States. Because of action taken by the Environmental Protection Agency, EDB may no longer be used as a treatment for mangoes.

DATES: Interim rule effective December 14, 1987. Consideration will be given only to comments postmarked or received on or before February 12, 1988.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road.

[3] Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine (local offices are listed in telephone directories), or by contacting National Programs, Plants Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[4] See footnote 1 to § 301.96-5(a).

Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-141. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. F.E. Cooper, Senior Operations Officer, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

Before the publication of this document, §§ 319.56-2h and 319.56-2i of these regulations provided for mangoes, in their country of origin, to be fumigated with ethylene dibromide as a condition-of-entry treatment before they were imported into the United States from Central America, the West Indies, Brazil, and Mexico. These treatments helped prevent the introduction of certain fruit flies into the United States.

Because of action taken by the Environmental Protection Agency (EPA), ethylene dibromide may no longer be used as a condition-of-entry treatment for mangoes imported into the United States. We are therefore removing the provisions of §§ 319.56-2h and 319.56-2i. Consequently, mangoes can no longer be fumigated with ethylene dibromide.

Before October 1, 1987, a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes had been established by EPA for the use of EDB in foreign countries as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. The tolerance expired at midnight, September 30, 1987. Consequently, the tolerance for residues of EDB per se in or on mangoes is zero, and EDB cannot be used as a fumigant for mangoes without leaving residues.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because of the action taken by EPA, ethylene dibromide may no longer be used as a condition-of-entry treatment for mangoes imported into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make this interim rule effective upon publication. We will consider comments on this interim rule that are postmarked or received within 60 days of publication. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of those comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This document merely reflects that because of action taken by EPA, ethylene dibromide may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States. For this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 319.56-2h and 319.56-2i [Removed and Reserved]

2. "Subpart—Fruit and Vegetables" (7 CFR 319.56 through 319.56-8) is amended by removing §§ 319.56-2h and 319.56-2i, and by designating these sections as "Reserved."

Done at Washington, D.C., this 8th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-28582 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 352

[Docket No. 87-132]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Plant Quarantine Safeguard regulations by adding specific requirements for shipping avocados from Mexico through the United States to other destinations. The interim rule was necessary to prevent injurious plant pests that might be carried by avocados from Mexico from being introduced into the United States.

EFFECTIVE DATE: January 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Import Unit, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1987, we published in the Federal Register (52 FR 27669–27672, Docket Number 87–101) an interim rule that amended the regulations in 7 CFR Part 352 by adding specific requirements for shipping avocados from Mexico through the United States to other destinations. These requirements include a prohibition on shipping avocados from Mexico through certain areas of the western and southeastern United States to protect the plant industry in the United States against plant pests that might be carried by the avocados from Mexico. Our interim rule invited the submission of written comments, which were required to be postmarked or received on or before September 21, 1987. We received 138 comments. One hundred thirty-six commenters supported the interim rule as published, and the following 2 commenters opposed.

Comments

One commenter states that the geographical restrictions on shipping avocados from Mexico and Japan, and that APHIS has not provided sufficient biological evidence to justify the geographical restrictions.

As stated in the interim rule, we have determined that the risk of avocados from Mexico introducing the Mexican fruit fly into the western and southeastern United States may be significant. Various authors have rated the avocado as a statisfactory, secondary, inferior, or tertiary host of the Mexican fruit fly. Since the 1930's, we have intercepted avocados infested with fruit fly larvae, many times identified as *A. ludens,* approximately 200 times. Although we know that certain cultivars of avocados are resistant to attack by various species of fruit flies, we do not have sufficient data on the susceptibility of Hass avocados to the Mexican fruit fly. Avocado seed weevils and the avocado seed moth also may pose a significant pest risk in areas of the United States where avocados are grown. The seed weevils, for example, pupate within the seed of avocados and emerge from the fruit as adults. We commonly intercept avocado seed weevils and the avocado seed moth in avocados from Mexico. These pests could become established in the United States if introduced into areas of the United States where avocados are grown. Therefore, to protect U.S. crops from the Mexican fruit fly, the avocado seed weevil, and the avocado seed moth, we must prohibit avocados from Mexico from being shipped through the western and southeastern United States.

The other commenter, an avocado grower in southern California, objects to APHIS allowing avocados from Mexico to be shipped from the United States to foreign markets. The commenter fears that plant pests from Mexico will travel with the fruits and eventually infest crops in the United States. APHIS recognizes this concern, and that is the reason we have prohibited avocados from Mexico from being shipped through the western and southeastern United States, where pests that may be carried by the avocados could become established. In addition, we have placed strict requirements on the movement of avocados from Mexico through the United States. The owner or owner's agent must obtain a permit to move the avocados through the United States, must declare the avocados upon arrival at a port in the United States, and must make the avocados available for examination by an inspector. The avocados may enter the United States only at Houston, Texas; the border ports of Nogales, Arizona, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; or at other ports within approved shipping areas in the United States for avocados. The avocados must be transported through the United States either by air or in a refrigerated truck or rail car or in refrigerated containers on a truck or rail car. If the avocados are containerized, an inspector must seal the containers with a serially numbered seal at the port of arrival. If the avocados are shipped in a refrigerated truck or rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of arrival. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The avocados must be shipped through the United States under Customs bond, a monetary bond given by an owner to guarantee, among other things, that the avocados are moved in accordance with the regulations. APHIS feels confident that these measures will protect U.S. crops from plant pests that may be carried by avocados from Mexico.

The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

With the exception of geographical routes through the United States, this rule does not make any changes in the current requirements for shipping avocados from Mexico through the United States for export. This rule restricts the movement of avocados from Mexico to that area of the United States bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland; and on the east and south by a line extending from Brownsville, Texas, to Houston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. During the past year, we granted four permits that allowed certain avocados from Mexico to be shipped through the western and southeastern United States. One of the permits has expired. Three of these permits were to be effective through part of 1988. The interim rule invalidated those permits. However, these permit holders may apply for new permits that prescribe a shipping route within the permitted area of the United States. The rule did not prohibit these permit holders from moving their avocados through the United States; it merely restricted the shipping routes.

Under the circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local

officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant disease, Plant pest, Plants (Agriculture), Postal service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, the interim rule amending 7 CFR Part 352 that was published at 52 FR 27669–27672 on July 23, 1987, is adopted as a final rule.

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-28583 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 413

[Amdt. No. 2; Doc. No. 4898S]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), effective for the 1989 crop year. The intended effect of this rule is to maintain the effectiveness of the present Texas Citrus Crop Insurance Regulations (7 CFR Part 413) only through the 1988 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations as § 401.115, Texas Citrus Endorsement, effective for the 1989 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1990.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 413 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

On Wednesday, September 9, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 33941, to amend 7 CFR Part 413 as set forth above. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC adopts as final the proposed rule published at 52 FR 33941 amending the subpart heading to provide that 7 CFR Part 413 will be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), as follows:

PART 413—[AMENDED]

1. The Authority citation for 7 CFR Part 413 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 413 is revised to read as follows:

Subpart—Regulations for the 1987 and 1988 Crop Years

Done in Washington, DC on November 24, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-28686 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 423

[Amdt. No. 1; Doc. No. 5058S]

Flax Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Flax Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations as § 401.116, Flax Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 423 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Tuesday, September 1, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 32931 to amend 7 CFR Part 423 as set forth above. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC adopts as final the proposed rule published at 52 FR 32931 amending the subpart heading to provide that 7 CFR Part 423 will be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 423

Crop insurance, Flax.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Subpart heading to the Flax Crop Insurance Regulations (7 CFR Part 423), as follows:

PART 423—[AMENDED]

1. The Authority citation for 7 CFR Part 423 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 423 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on November 24, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-28687 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 431

[Amdt. No. 1; Doc. No. 5057S]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Soybean Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations as § 401.117, Soybean Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop

Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language which, if changed, requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401 one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 431 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Tuesday, September 1, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 32932 to amend 7 CFR Part 431 as set forth above. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC adopts as final the proposed rule published at 52 FR 32932 amending the subpart heading to provide that 7 CFR Part 431 will be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybean.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Subpart heading to the Soybean Crop Insurance Regulations (7 CFR Part 431), as follows:

PART 431—[AMENDED]

1. The Authority citation for 7 CFR Part 431 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 431 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on November 24, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-28688 Filed 12-11-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 432

[Amendment No. 2; Doc. No. 4900S]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Corn Crop Insurance Regulations (7 CFR Part 432) only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations as § 401.111, Corn Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed, requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401 one set of regulations and one master policy to contain the language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 432 will be effective only through the end of the 1987 crop year, FCIC amends the subpart heading of these regulations to specify that such will be the case.

On Wednesday, September 9, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 33942, to amend 7 CFR Part 432 as set forth above. The public was given 30 day in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC adopts as final the proposed rule published at 52 FR 33942 amending the subpart heading to provide that 7 CFR Part 432 will be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Corn Crop Insurance Regulations (7 CFR Part 432), as follows:

PART 432—[AMENDED]

1. The Authority citation for 7 CFR Part 432 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 432 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on November 24, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–28685 Filed 12–11–87; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-153]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Ohio from Class A to Class Free. This action is necessary because Ohio meets the standards for Class Free status. That action relieved certain restrictions on the interstate movement of cattle from Ohio.

EFFECTIVE DATE: Janaury 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective June 11, 1987 (52 FR 22290–22292, Docket Number 87–070), we amended the regulations in 9 CFR Part 78 governing the interstate movement of cattle because of brucellosis by changing the classification of Ohio from Class A to Class Free. We did not receive any comments, which were required to be postmarked or received on or before August 10, 1987. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Ohio reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Cattle from certified brucellosis free herds moving interstate are not affected by this change in status. We have determined that the change in brucellosis status made by the interim rule will not affect market patterns significantly and will not have a significant economic impact on those persons affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 52 FR 22290–22292 on June 11, 1987.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–28658 Filed 12–11–87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing the securities activities of certain subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with certain securities companies. The amendments: (1) Delete the requirement that the offices of securities subsidiaries and affiliates must be accessed through a separate entrance from that used by the bank (the existing requirement for physically separate offices is retained), (2) delete the prohibition against securities subsidiaries and affiliates sharing a common name or logo with the bank, and (3) establish a number of affirmative disclosure requirements to the effect that securities recommended, offered or sold by or through a securities subsidiary or affiliate are not FDIC insured deposits unless otherwise indicated and that such securities are not obligations of, nor are guaranteed by the bank.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898–3730, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In November 1984, the Board of Directors of the FDIC added § 337.4 to Part 337 of its regulations titled "Unsafe and Unsound Banking Practices" (12 CFR Part 337) (49 FR 46709, November 28, 1984). Section 337.4 governs certain securities activities of subsidiaries of insured nonmember banks as well as affiliate relationships between insured nonmember banks and certain types of securities companies. The regulation was adopted as a result of a rulemaking procedure initiated in 1982 after the Board of Directors issued a policy statement concerning the applicability of the Glass-Steagall Act (12 U.S.C. 24 (Seventh), 78, 377 and 378) to affiliates and subsidiaries of insured nonmember banks (47 FR 38984, September 3, 1982). The policy statement concluded that the Glass-Steagall Act does not prohibit insured nonmember banks from being affiliated with securities companies nor from establishing or acquiring a securities subsidiary. Inasmuch as it was also the Board of Directors' conclusion that certain indirect securities activities could pose safety and soundness and other concerns if unregulated, the FDIC sought comment on the need to adopt regulations governing such activities. The FDIC issued an Advance Notice of Proposed Rulemaking in 1982 (47 FR 42141), a Proposed Regulation in 1983 (48 FR 22155), and a revised Proposed Regulation in 1984 (49 FR 18497). The final regulation became effective on December 28, 1984.[1]

In general, the regulation was designed to protect bank safety and soundness, to insure the legal separateness of a bank from its securities subsidiary or affiliate, and to prevent possible confusion on the part of the public which could give rise to claims against the deposit insurance fund and/or claims against the FDIC as receiver of a closed bank. The FDIC sought to achieve these ends by, among other things: (1) Prohibiting the use by an insured nonmember bank of a name or logo common to that used by its securities subsidiary or affiliate if that subsidiary or affiliate engages in securities activities prohibited to the bank by the Glass-Steagall Act, and (2) requiring that an insured nonmember bank be physically separate and distinct in its operations from the operations of such a securities subsidiary or affiliate. The regulation required at a minimum separate offices clearly identified as belonging to the subsidiary or affiliate that share no common entrance with the bank except for a common outer lobby or common corridor. (Insured nonmember banks that had become affiliated with a securities company prior to December 28, 1984, or which prior to that date established or acquired a securities subsidiary, were given until December 28, 1985, to comply with the common name and logo and physical separation provisions of the regulation.)

In December 1985, the FDIC received two petitions requesting that the FDIC reconsider the prohibition on the use of a common name or logo by a bank and its securities affiliate. The petitions were filed by Merrill Lynch Bank and Trust, Princeton, New Jersey and Prudential Bank and Trust, Atlanta, Georgia. Both petitioners became affiliated with a securities company prior to December 28, 1984. Prudential Bank and Trust was acquired by a company which was also affiliated with a securities firm and Merrill Lynch Bank and Trust (whose parent also owns a securities company) was formed as a newly-incorporated bank. A third petition requesting that the FDIC reconsider the separate office/separate entrance requirement for a bank's subsidiary was filed by Washington Mutual Savings Bank, Seattle, Washington. Washington Mutual Savings Bank acquired a securities subsidiary prior to December 28, 1984. The FDIC subsequently received several letters from other insured nonmember banks which supported the petitions. In order to afford the FDIC sufficient opportunity to study the petitions, the Board of Directors extended the December 28,

[1] On August 10, 1987, President Reagan signed into law the Competitive Equality Banking Act of 1987 (Pub. L. 100–86). Section 103 of that Act made section 20 and 32 of the Glass-Steagall Act (12 U.S.C. 377, 78) applicable to nonmember banks to the same extent as member banks for the period beginning from March 6, 1987, to March 1, 1988. Sections 20 and 32 respectively limit the ability of a member bank to affiliate with a company principally engaged in certain securities activities and interlocks between member banks and securities companies primarily engaged in certain securities activities. Affiliations established prior to March 5, 1987 are grandfathered as are officer, director, and employee interlocks established in connection with such affiliations.

1985, compliance deadline with the separate office/separate entrance and name provisions of the regulation for pre-existing affiliate and subsidiary relationships until June 30, 1986 (51 FR 880, January 9, 1986).

At its June 16, 1986, Board of Directors meeting the FDIC's Board of Directors voted to grant the petitioners' request for reconsideration and to solicit comment on whether or not to retain or modify in some manner the prohibition on the use of a common name or logo and the separate office/separate entrance requirement. The Board of Directors at that time also voted to extend the June 30, 1986, compliance deadline with these provisions to December 31, 1986, for institutions with affiliate and/or subsidiary relationships that pre-dated the effective date of the regulation. (51 FR 23405, June 27, 1986). The compliance deadline was extended in order to accommodate the solicitation of comment on the issue of whether or not to retain, eliminate, or modify the relevant provisions of the regulation. Request for comment was published on August 20, 1986. (51 FR 29658). The compliance deadline was subsequently extended until June 30, 1987, (51 FR 45755, December 22, 1986) and once again extended until October 15, 1987, (52 FR 23543, June 23, 1987) inasmuch as the rulemaking had not been completed.

The FDIC received 38 comments in response to its request for comments on the general issue of whether or not to retain, eliminate, or modify the common name and logo prohibition and the separate office/separate entrance requirement. After carefully reviewing those comments, the FDIC's Board of Directors voted to propose a specific amendment to § 337.4. (52 FR 11492, April 9, 1987. The amendments as proposed by the FDIC: (1) Deleted the requirement that a securities subsidiary and/or affiliate must have a separate entrance from that used by the bank; (2) allowed a securities subsidiary and/or affiliate to utilize separate "office space" within the bank's branches; (3) deleted the prohibition against a securities subsidiary and/or affiliate sharing a common name or logo with the bank; and (4) established certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through the securities subsidiary and/or affiliate are not FDIC insured deposits, that the subsidiary and/or affiliate are separate organizations from the bank, and that the obligations of the subsidiary and/or affiliate are not obligations of, or guaranteed by, the bank.

The disclosures were required to be given in the following circumstances: (1) A one time written disclosure had to be provided by the affiliate and/or subsidiary to each customer or prospective customer at the inception of the customer relationship prior to executing or entering into any transactions with, or on behalf of, the customer. The subsidiary and/or affiliate also had to provide the disclosure to individuals who established their customer relationship prior to the effective date of the amendment at the time of such customer's first transaction with the affiliate or the subsidiary after the date the amendment became effective; (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promoted or discussed the services or products of the affiliate and/or subsidiary and the bank had to carry the disclosure; (3) if the bank and its subsidiary or affiliate used the same or a similar name, all written communications with the bank's customers by the affiliate or the subsidiary, either directly or indirectly through the bank, had to carry the disclosure; and (4) if the bank's subsidiary or affiliate recommended, offered, or sold any investment instrument denominated with the same or a similar name to that shared by the bank and its subsidiary or affiliate, the disclosure had to be given to the customer prior to the execution of the trade.

The comment period on the proposed amendments closed on May 11, 1987. The FDIC received a total of 23 comments. A summary of those comments is set forth below.

Overall Comment Summary

All but one of the comments were in favor of the FDIC's proposal to eliminate the prohibition on the use of a common name or logo, to eliminate the separate entrance requirement, and to allow the use of separate "office space" to satisfy the physical separation requirement. The comments which discussed the separate office/separate entrance requirement urged the FDIC not to specify what is necessary to achieve physical separation inasmuch as to do so would prevent banks from complying with the regulation in the most effective manner and it would also deter innovation.

Overall, the comments focused on the proposed disclosure requirements. In general, the comments acknowledged and supported the concept that disclosure is the most effective means for preventing customer confusion. ("The elements of the proposed disclosure are essentially those that a responsible corporate counsel would recommend for the protection of the bank, its subsidiary or affiliate, and its customers.") Most strongly argued, however, that several of the disclosure proposals were overly broad and that, in some instances, compliance with the proposals would be both costly and burdensome. It was suggested by several comments that the disclosure requirements only be triggered in situations in which a bank and its subsidiary or affiliates share a common name or logo, share offices, or jointly market their products and services. According to these comments, it is only in such situations that customer confusion is likely to arise whereas, absent any of these three, the likelihood of a customer confusing an investment product offered by a bank's subsidiary or affiliate with an insured deposit of the bank is minimal. Several comments agreed that disclosures were appropriate when a security carrying the same name as the bank is sold that requiring disclosure to customers prior to their initial transaction with the subsidiary or affiliate was a good idea. As far as the need to require any continuing, periodic disclosure, one comment indicated that disclosure in confirmations should provide frequent reminders to customer at a manageable cost. Several comments indicated that affirmative disclosure requirements are unnecessary inasmuch as sections of the current regulation (Sections 337.4(a)(2)(ix)), and (c)(6)) already require subsidiaries and affiliates to conduct their business pursuant to independent policies and procedures designed to inform customers and prospective customers that the bank, the subsidiary, and the affiliate are separate entities, that the bank does not guarantee the obligations of the subsidiary or affiliate, and that investment products offered, recommended or sold by the subsidiary of affiliate are not FDIC insured deposits. These comments indicated that if the FDIC feels that these provisions need further elaboration, the FDIC could simply insert language in the regulation indicating that it is the FDIC's intent to prohibit any subsidiary or affiliate from misrepresenting that its investment products are bank obligations or that they are FDIC deposits, lastly, numerous other comments suggested ways in which the proposed disclosures could be modified to lessen the burden of compliance and to allow for greater flexibility. (See below.)

Specific Objections Raised to Proposed Disclosure Requirement and Suggested Changes

1. The proposed one time disclosure to all new customers (disclosure to existing customers to be given at time of first transaction after effective date of regulation) is overly broad. Compliance would be costly if the affiliate/subsidiary's client base is large and that client base far exceeds the bank's customer base. In such event, disclosure would serve no purpose and may confuse the distinction between FDIC and SIPC insurance coverage.

2. If disclosure is required to all new as well as existing customers, it should only be required in instances in which the bank and its affiliate/subsidiary share a common name or logo.

3. While initial customer contact disclosure and disclosure in the context of joint advertisements are consistent with the FDIC's objective to avoid customer confusion, the disclosure requirements are not necessary as the regulation already requires separate and independent operations designed to apprise customers as to with whom they are dealing.

4. The initial customer contact disclosure may make sense in that it can be viewed as part of the general obligation to inform customers of the nature of the investment and other services they are receiving. Once having done this, however, there is no need for any subsequent, continuing disclosure.

5. The regulation should not require that existing customers receive disclosure. The expense of identifying such customers outweighs any benefits. As an alternative, the FDIC should consider allowing the subsidiary or affiliate to place a disclosure in its periodic customer statements.

6. If disclosure is required, disclosure should be made by the bank and not the subsidiary or affiliate. In this way, any individual who deals with both the bank and its subsidiary or affiliate will receive the requisite disclosure and the burden of providing disclosure will not be placed on the subsidiary or affiliate.

7. The proposed requirement that the initial customer contact disclosure be given prior to entering into any transaction with the customer is ambiguous. (What is a transaction?)

8. The proposed disclosure requirements do not take into account that the proper form and content of disclosure varies with the circumstances. As time is money in TV and radio advertising, the regulation should afford the subsidiary/affiliate the flexibility to tailor the disclosures to the media used.

9. The proposal appears to call for a narrative disclosure. It should be streamlined into one sentence.

10. The FDIC should not specify language for the disclosure but should leave that decision to the affected parties. This will afford them the flexibility to comply in the most cost effective manner.

11. Rather than set forth the timing and nature of disclosure, the regulation should supplement existing § 337.4 (a)(2)(ix) and (c)(6) with general language making it clear that banks and their subsidiaries/affiliates are prohibited from advertising their products in such a way as to generate confusion regarding deposit insurance.

12. Requiring written notice to customers prior to the execution of the trade when they purchase instruments denominated with a name similar to the bank's name precludes telephone marketing. The disclosure requirements should be considered to be met if disclosure is given before settlement or in the confirmation.

13. The regulation should allow flexibility of compliance by permitting disclosure to be accomplished in the confirmation, the prospectus (if received before the purchase is made) or in a written application. The subsidiary/affiliate should have the option of eliminating the disclosure from joint advertisements provided that the disclosure is given in connection with purchases.

14. The proposed disclosure requirements regarding joint advertising are not necessary. Existing federal law effectively precludes misrepresentation. New York Stock Exchange Rule 472 prohibits the making of untrue statements or omissions of material facts, promises of specific results or unwarranted claims, or opinions for which their is no reasonable basis. NASD Guidelines, Article 3, Section 35, Rules of Fair Practice, Subsection D provides that all public communications must be based upon fair dealing and good faith and may not omit any material facts in light of the context of the materials presented. Any purchasers of securities may have an action under SEC rule 10(b)(5) if there has been any material omission of fact or misrepresentation in connection with the purchase. Lastly, 18 U.S.C. 709 makes it a criminal offense for any corporation to represent that its obligations are FDIC insured deposits when they are not.

15. Advertisements which simply refer to the existence of the affiliate/subsidiary and at the same time mention the bank should not trigger disclosure, *i.e.*, should not be considered joint advertisements.

16. No advertising disclosures are necessary if the ad clearly identifies which entity provides which service.

17. No advertising disclosure is necessary if the banking service advertised is not related to deposits, *e.g.*, the affiliate solicits customers for the bank's mortgage department.

18. Requiring disclosure in "all written communications" from the subsidiary/affiliate to the bank's customers is overly broad. As written, it covers account statements, proxy solicitations, annual reports, etc., hundreds of thousands of which may be mailed out annually. Only communications offering or promoting securities products should require disclosure.

19. Requiring disclosure in communications to bank customers will require a time consuming comparison of the bank's customer list with the subsidiary/affiliate's client list. As the bank's customer list may change daily, at a minimum, the regulation should allow for good faith compliance. As an affiliate is likely to simply place the disclosure in promotions sent to all its clients (rather than try to cull out the bank's customers) the nature and form of the disclosure should be as brief as possible. Disclosure in communications to bank customers should be triggered only where a common name or log is used.

20. Disclosure should be required in joint ads only in instances where the aid is required to carry the FDIC's official advertising statement.

21. Disclosure in communications with bank customers and when the investment instrument is onerous as is the requirement to give disclosure to all new and existing customers. In order to comply, new account documents will need to be prepared and distributed and a mass mailing will be required for all current customers.

22. A disclosure should appear on the face of all investment instruments if they are denominated with a name similar to that of the bank.

23. Customers should not be required to sign the disclosure. Such a requirement will only add to the cost of compliance and create needless paperwork. The SEC has never required that customers acknowledge the receipt of a prospectus in writing. This should serve as a precedent for the FDIC.

24. If a disclosure requirement is adopted, it should only apply to a bank's subsidiary. A bank is more at risk due to its subsidiary's activities than due to those of an affiliate.

25. If any disclosure requirement is adopted it should not take effect for six months so that the affected parties may have sufficient time to comply.

Specific Comments and Objections Raised Regarding Separate Entrance and Separate Office Requirements

1. The regulation should not specify how physical segregation is to be achieved. This will afford bank subsidiaries and affiliates the necessary flexibility to comply with the regulation in the most cost effective manner.

2. Disclosure is only appropriate where the surroundings (*i.e.*, shared offices) may generate confusion. If the affiliate or subsidiary operates outside of the bank's branches, customer disclosure should not be required.

3. The regulation should be amended so as to clarify that physical separation is only required in public access areas.

4. Disclosure should not be required where shared offices are utilized if the subsidiary's/affiliate's customers are institutional investors. Such investors are sophisticated and do not need to receive disclosure.

After carefully considering the comments, the Board of Directors has adopted a final amendment to § 337.4 which reflects a number of changes from the original proposal. The final amendment as adopted is discussed at length below along with the basis for the Board of Directors' action.[2]

[2] Section 201(b) of the Competitive Equality Banking Act of 1987 placed a moratorium on new securities activities of insured banks and their subsidiaries and affiliates beginning March 6, 1987 and ending March 1, 1988. Specifically that provision indicated that no federal banking agency may authorize or allow by action, inaction, or otherwise any insured bank or subsidiary or affiliate to engage to any extent whatever:

(A) In the flotation, underwriting, public sale, dealing in, or distribution of securities if that approval would require the agency to determine that the entity which would conduct such activities would not be engaged principally in such activities,

(B) In any securities activity not legally authorized in writing prior to March 5, 1987, or

(C) In the operation of a nondealer marketplace in options.

It is the FDIC's opinion that the final amendment to § 337.4 of the FDIC's regulations set out below is not contrary to the Competitive Equality Banking Act inasmuch as neither the amendment nor the regulation authorizes any securities activities but, instead, restricts those authorities where they are otherwise authorized under State law. What is more, while the amendment modifies the prudential restrictions under which an insured nonmember bank may have a subsidiary or affiliate which engages in certain securities activities, the scope of the activities which trigger those restrictions was in place prior to the March 5, 1987 date and remains unaffected.

Discussion

Physical Separation Requirement

The FDIC is adopting substantially as proposed the amendment to footnotes 4 and 7 of the regulation pertaining to physically separate and distinct operations and is deleting the prohibition on a bank and its securities subsidiary or affiliate sharing a common entrance. As indicated in the FDIC's April 9, 1987 solicitation of comment (52 FR 11492), it was the FDIC's intent in adopting the separate office/separate entrance requirement (as well as the prohibition on the use of a common name or logo and the other requirements with respect to subsidiaries and affiliates) to address three concerns: (1) Safety and soundness (the FDIC wants to insure that the bank is independent and operated in a manner consistent with safe and sound banking practices); (2) protection of the insurance fund (the FDIC wants to avoid claims against the bank arising out of the public's misperception as to with whom it is dealing and in what capacity); and (3) compliance with section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits securities companies from taking deposits and banks from engaging in certain securities activities. While the FDIC continues to believe that the separate office/separate entrance requirement is consistent with the FDIC's authority and is supportable as a matter of law, the FDIC has determined upon careful reconsideration that the concerns articulated above can be addressed in terms of the physical separation requirement in a less burdensome manner without jeopardizing the FDIC's goals. In view thereof, and commensurate with the comments which argued that maintaining the present physical separation requirement adds additional expense, deters de novo entry, and lessens the ability of banks to compete with other financial services providers who offer their customers the convenience of one stop shopping, the FDIC has decided to adopt a more flexible physical separation standard. Inasmuch as the more lenient physical separation standard is coupled with affirmative disclosure (see below), it is the Board of Directors' conclusion that the changes made to the final rule will not jeopardize bank safety or soundness, materially affect the legal separation between the bank and its subsidiary or affiliate sought to be achieved by the regulation, or increase the likelihood of customer confusion which could arise from the conduct of business in the same location.

Footnotes 4 and 7 as adopted in the final rule respectively indicate that if the subsidiary or affiliate conducts business in the same location in which the bank conducts business the subsidiary or affiliate must utilize physically separate offices or office space from that used by the bank. In addition, such offices or office space must be clearly and prominently identified so as to distinguish the subsidiary or affiliate from the bank. In response to the comments, the language of the final rule has been modified to clarify that the physical separation requirement does not apply in areas to which the public does not have access.

It is the FDIC's intent by adopting this amendment to establish a more flexible physical separation requirement than that presently required by the regulation, *i.e.*, one which leaves the decision on how to physically segregate the operations of the subsidiary or affiliate from the operations of the bank to the institution itself. To this end the FDIC has not specifically set forth what is required for the offices or office space to be sufficiently distinct to comply with the regulation. The FDIC will determine on a case-by-case basis whether the operations are sufficiently distinct so as to avoid customer confusion. While the FDIC recognizes that adopting this approach may leave some insured nonmember banks with questions as to whether or not their particular configuration satisfies the regulation, the FDIC feels that the resulting ambiguity is outweighed by the benefits of flexibility. Banks with questions should contact their local FDIC Regional Office or the Legal Division of the Washington (DC) office for an interpretation.

The FDIC wishes to stress that actual physical separation must be achieved. It is the FDIC's present opinion that, alone or in combination, signs, simple decor difference (*e.g.*, a different color scheme or style of furniture) and other types of distinctions which provide at best minimal differentiation (*e.g.*, badges on sales representatives) will not generally satisfy the physical separation requirement.

Common Name or Logo

As the FDIC has previously indicated (see 52 FR 11492 and earlier **Federal Register** notices) the FDIC's primary concern in connection with the use of a common name or logo by a bank and its securities subsidiary or affiliate is customer confusion and possible claims against the deposit insurance fund or the FDIC as receiver. The FDIC proposed to eliminate the common name and logo prohibition, however, as upon

reconsideration it was determined that those concerns could be addressed more directly, and in a less burdensome fashion, if affirmative disclosure requirements were substituted in lieu of the ban on the use of a common name or logo. The FDIC has taken note of the experience of several banks that have operated for, in some cases, several years, while using the same name or a similar name to that of their securities company affiliates. These banks commented that they have not experienced any evidence of customer confusion arising from the use of a similar name to that of their affiliates. In addition, the FDIC notes that several events since the adoption of the common name or logo prohibition have demonstrated that the absence of a common name or logo has not prevented customer confidence from being shaken in a depository institution in the event of adverse disclosures concerning the depository institution's subsidiaries or affiliates. For example, publicity concerning Equity Programs Investment Corp. ("EPIC"), a subsidiary of Community Savings and Loan Association, Bethesda, Maryland, played a part in precipitating a run on the savings and loan association. Although the FDIC continues to believe that a common name or logo can exacerbate a difficult situation, the FDIC anticipates that the transaction and other restrictions built into section 337.4 should generally prevent such situations from arising. In view thereof, the incremental protection provided by a different name does not appear to outweigh the costs associated therewith as the same protection can be provided by less burdensome means, *i.e.*, disclosure.

As indicated above, the comments uniformly agreed that the FDIC should eliminate the prohibition on the use of a common name or logo and that disclosure is the most effective means of preventing customer confusion. While some comments argued that existing provisions of the regulation already mandate disclosure (*i.e.*, no further express disclosure requirement is necessary) and overall the comments disagreed on the proper timing, extent and nature of disclosure, the comments nonetheless supported the concept of disclosure. After carefully reviewing those comments, the Board of Directors voted to eliminate the prohibition on the use of a common name or logo. The Board of Directors also voted in conjunction therewith to adopt a number of affirmative disclosure requirements which would be triggered by, among other things, the use of the same or a similar name or logo by a bank and its securities subsidiary or affiliate. The disclosure requirements (including the concept of what constitutes the same or a similar name or logo) are discussed in detail below.

Disclosure Requirements

The proposed amendments required disclosure to the effect that investments recommended, offered or sold by or through the bank's securities subsidiary and/or affiliate are not FDIC insured deposits, that the subsidiary and/or affiliate is a separate organization from the bank, and that the obligations of the subsidiary and/or affiliate are not obligations of, or guaranteed by, the bank. As proposed, disclosure was to be given in four instances: (1) A one time written disclosure was to be provided by the affiliate and/or subsidiary to each customer or prospective customer at the inception of the customer relationship prior to executing or entering into any transaction with, or on behalf of, the customer. (The disclosure was also to be given to individuals who established their customer relationship prior to the effective date of the amendment at the time of such customer's first transaction with the affiliate and/or subsidiary after the date the amendment became effective); (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promoted or discussed the services or products of the affiliate and/or subsidiary and the bank had to carry the disclosure; (3) if the bank and its subsidiary or affiliate shared the same or a similar name, all written communications with the bank's customers by the affiliate or the subsidiary, either directly or indirectly through the bank, needed to carry the disclosure; (4) if the bank's subsidiary or affiliate recommended, offered, or sold any investment instrument denominated with the same or a similar name to that shared by the bank and its subsidiary or affiliate, disclosure needed to be given to the customer prior to the execution of the trade. Disclosure as proposed by items 1 and 2 was triggered regardless of whether or not the bank and the subisdiary and/or affiliate shared the same or a similar name or shared the same facility. The disclosure as proposed in items 3 and 4 was, on the other hand, only triggered by the use of the same or a similar name.

The disclosure requirements as adopted by the final regulation differ in a number of significant respects from those which were proposed. Under the final amendment disclosure to customers and prospective customers is triggered in the following four instances: (1) If the bank and its subsidiary or affiliate share the same or a similar name or logo, (2) if the bank and its subsidiary or affiliate conduct business in the same location, (3) if the bank's subsidiary or affiliate advertises or promotes particular securities, or solicits purchasers for particular securities, in advertisements, promotions or similar communications in which the bank advertises or promotes its services, or (4) if the bank's subsidiary or affiliate places or causes to be placed in communications from the bank to bank's customers advertisements, promotions or solicitations pertaining to particular securities. The final regulation thus curtails substantially the scope of the required disclosures. This is in keeping with comments which argued that the FDIC should limit disclosure to instances in which: (1) The bank and its subsidiary or affiliate share a common name or logo, (2) joint advertisements or promotions are utilized, or (3) a common facility is used. The four events triggering disclosure, the content of disclosure, and the timing and placement of disclosure are all discussed separately below.

As proposed the disclosure requirement were contained in a footnote to the bona fide subsidiary definition and the affiliate provisions of the regulation. The footnotes modified the requirement that the subsidiary and/or affiliate must conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers that the subsidiary/affiliate and the bank are separate organizations, that the securities are not bank obligations, and that the securities are not FDIC insured. The final amendment creates a new § 337.4(h) titled "Disclosure" and eliminates old § 337.4(h). (Old § 337.4(h) set forth deadlines for compliance with the regulation by insured nonmember banks that had subsidiary and/or affiliate relationships with companies which predated December 28, 1984, the day the regulation became effective. As the relevant compliance deadlines have expired, the provision was no longer necessary.) Putting the disclosure requirements in a separate paragraph provides more clarity and emphasizes the importance the FDIC places on disclosure. By leaving the above reference portion of the bona fide subsidiary definition and affiliate provision of the regulation intact, the FDIC has preserved the obligation of all subsidiaries that must be bona fide and all affiliates encompassed by § 337.4(c) to operate under independent policies

and procedures, etc. Subsidiaries and affiliates that share the same or a similar name to the bank or operate in such a manner as to trigger disclosure must meet the specific standards set forth in new § 337.4(h).

Triggering Events

Same or Similar Name or Logo

The FDIC has been of the opinion throughout the development of section 337.4 that the existence of a common name or logo significantly contributes to possible customer confusion. Although the FDIC has decided to drop the prohibition on the use of a common name or logo, the decision to do so does not signal a change of opinion with respect to this issue. It signals rather a desire on the FDIC's part to address possible customer confusion in a more direct fashion through disclosure. It is anticipated that disclosure will be an effective means of informing the public as to with whom it is dealing. By allowing the use of a common name or logo the FDIC hopes to permit banks to economize and to effectively compete with other financial services providers. At the same time, however, the FDIC still has concerns regarding customer confusion and is still of the opinion that the use of the same or a similar name can give rise to safety and soundness concerns. In order to address those concerns, the final regulation requires that disclosure be made if the bank and its subsidiary or affiliate share the same or a similar name or logo.

In determining whether any two names are the same or similar, the FDIC will look to the overall similarity of the names in question given all the circumstances. It is not necessarily material to the outcome of the FDIC's decisions that a particular name is commonly used in other businesses or in banking. The FDIC wishes to prevent confusion on the part of persons who may find themselves dealing with any particular bank and its subsidiary or affiliate. The fact that other businesses may use a generically similar name (for example, "American") will not necessarily prevent any particular customer of a bank whose name contains that word from becoming confused or misinformed in its dealings with the bank's subsidiary or affiliate if the subsidiary's of affiliate's name also contains the same word.

The FDIC will generally consider elements such as those set forth below in reaching its conclusion. If two names differ only slightly in spelling or wording and the two names thus retain a similar sound or obvious association with each other, the names will generally be considered to trigger disclosure (*e.g.*, Pacific First Bank & Trust Compnay/ Pacificfirst Securities). If two names share one or more of the same words or initials with the result that the two names are confusingly similar or that one name may be readily associated with the other by the casual observer (such as a case in which a subsidiary or affiliate uses as a name an acronym or set of initials readily associated with the bank) the two names will generally be considered to trigger disclosure. The shared use of commonly used business terms or abbreviations such as Co., Corp., or Inc. will not render two names similar, however, depending upon the circumstances, geographically descriptive terms may result in such a finding. If, for example, a bank named First Bank of Georgia has a securities subsidiary named Georgia Securities, the two names would probably not be considered similar if First Bank of Georgia is generally known throughout the financial community and to its customers as First Bank. On the other hand, given that fact that First Bank of Georgia is known as First Bank, the use of the name First Securities by the bank's subsidiary would generally be considered to trigger disclosure. In the case of a logo, any two logos will be considered to be the same or similar if the pictorial image of the two logos is substantially the same or one is confusingly similar to the other such that the two may be easily confused.

Banks should keep in mind that it is the FDIC's intent to expansively construe what consitutes the same or a similar name. The FDIC therefore reserves the right to determine, based upon all the circumstances, that two names which appear facially distinct are in fact similar. Banks with questions on whether they share a similar name with a securities affiliate or subsidiary should contact their local FDIC Regional Office or the Legal Division of the Washington, DC Office of an interpretation.

Operation in Same Location

Under the final regulation, if the bank and its securities subsidiary or affiliate conduct operations in the same location, disclosure must be made to customers who use that share facility. Customers of the subsidiary or affiliate whose contact with the securities company arises elsewhere need not receive disclosure unless one of the other triggering circumstances exists. For example, if the bank's affiliate conducts business out of the lobby of the bank and the affiliate also rents space in offices of an unafiliated bank or conduct oeprations in some other location in which the affiliated bank does not also conduct business, persons whose contact with the securities firm is *solely* at the location not shared by, nor associated with, the affiliated bank need not receive disclosure. Disclosure to the affiliate's customers would be required, however, if for example, the affiliate and the bank share the same or a similar nane or logo.

Whether or not the bank and its subsidiary or affiliate are conducting business in the same location will be determined on an interpretive basis. Banks should keep in mind that the regulation seeks to prevent the possible confusion which can arise from the proximity of the operations of the bank and its subsidiary or affiliate. With this in mind, the FDIC intends to apply the following general guidelines.

For the purposes of the final regulation, a bank and it securities subsidiary or affiliate will be considered to be conducting business in the same location if they conduct business out of offices in the same building. This would, as a matter of course, cover situations in which an office of the bank's subsidiary or affiliate is accessed through the lobby of the bank. It would also cover, for example, situations in which a bank and its subsidiary or affiliate operate out of a building that is owned or leased by the bank and which is solely occupied by the bank and its subsidiary or affiliate.

Operations within a multiple story building occupied by other businesses in addition to the bank and its subsidiary or affiliate may be considered to be at different locations depending upon such factors as: (1) Whether the building is generally identified with the bank (e.g., the First State Bank building), (2) the number of occupants in the building, and (3) whether the offices are sufficiently removed from one another such that customers are not likely to be confused due to the proximity of the operations.

Banks with questions on whether they share the same location with their affiliate or subsidiary should contact their local FDIC Regional Office or the Legal Division of the Washington, DC office for an interpretation.

Joint Promotions, Advertisements, and Solicitations—Communications With Bank Customers [3]

The final regulation retains the requirement for disclosure in the case of

[3] Insured nonmember banks should note that section 23B of the Federal Reserve Act (section 102(a), Pub. L. 100-86, August 10, 1987) may be construed to require disclosure in instances in which § 337.4 does not. Section 23B(c), which is applicable to insured nonmember banks to the same

Continued

joint advertisements, promotions, or solicitations. The scope of the requirement as adopted is narrower, however, than that which was proposed for comment. Under the final rule, only joint advertisements etc., in which the bank's subsidiary or affiliate advertises, promotes, or solicits purchasers with respect to particular securities are covered. Disclosure is not triggered under the final rule by joint advertisements, etc. which merely reference the existence of the subsidiary or affiliate relationship. For example, an advertisement by a bank which lists or displays the names of all of its subsidiaries or which indicates that securities services are available through one of the bank's subsidiaries would not constitute a joint advertisement within the meaning of the regulation. Joint advertisements, promotions, or solicitations which are covered by the regulation must carry the disclosure regardless of whether or not the bank and its subsidiary or affiliate share the same or a similar name or logo.

The final regulation cuts back on the disclosure that would have been triggered by "any" written communication from the subsidiary or affiliate to the bank's customers if the bank and its subsidiary or affiliate share the same or a similar name. Under the final regulation disclosure is only required to appear in advertisements, promotions, or solocitations which pertain to specific securities which the subsidiary or affiliate places or causes to be placed in communications from the bank to the bank's customers (*e.g.*, "stuffers"). It should be noted, however, that placing such promotions, advertisements, etc. in communications from the bank to its depositors triggers disclosure in the advertisement regardless of whether or not the bank and its subsidiary or affiliate share the same or a similar name or logo. Communications such as annual reports, proxy solicitations, tax accounting information, and similar materials generated by the subsidiary or affiliate need not contain the disclosure. Direct communications by the bank's affiliate or subsidiary to bank customers need not contain the disclosure unless those communications pertain to particular securities and jointly promote or advertise the bank's services. Although a bank depositor could be confused if he or she receives an advertisement for securities from the bank's subsidiary or affiliate and the bank and its subsidiary or affiliate share the same or a similar name, the depositor will receive disclosure when he or she opens an account or will receive disclosure in his or her customer statement if a purchase is made.

The "particular securities" language in the final regulation has been adopted in response to comments which argued that covering "all written communications" was unwarranted and in response to comments which argued that advertisements which merely allude to the existence of the subsidiary or affiliate but do not promote particular securities should not be viewed as presenting concerns. Only requiring disclosure in "stuffers" as opposed to covering all advertisements, promotions, or solicitations relieves the bank's subsidiary or affiliate from the burden of maintaining a current listing of the bank's customers and eliminates the potential for inadvertently directing promotions, solicitations or advertisements that do not carry the disclosure to bank customers.

Although the FDIC did receive several comments which argued that joint advertisements need not carry any disclosure as existing federal law effectively precludes misrepresentations, the Board of Directors has decided to retain the disclosure for joint advertisements. Although certain stock exchange rules as well as NASD guidelines prohibit the making of untrue statements or promises of specific results and/or require that public communications be based on fair dealing and good faith, the FDIC is also concerned that public misconceptions can readily stem from the juxtaposition of information in advertisements. We anticipate that most banks as well as their securities subsidiaries and/or affiliates will conduct business in accordance with the law and will not engage in misrepresentations. Confusion can result, however, from even the most well intended of ads. The Board of Directors also rejected the suggestion that disclosure only be required in instances in which the particular ad is required to carry the FDIC official advertising statement. As the public has come to readily associate federal deposit insurance with any banking institution, the FDIC is concerned that regardless of whether or not a bank's advertisement carries the FDIC official advertisement statement, the consuming public will understand the bank to be federally insured.

Content of Disclosure

The final regulation provides that the bank's subsidiary or affiliate must disclose to its customers and prospective customers that securities recommended, offered, or sold by or through the subsidiary and/or affiliate are not FDIC insured deposits (unless otherwise indicated), that such securities are not guaranteed by, nor are obligations of, the bank, and that the subsidiary and/or affiliate and the bank are separate organizations. The regulation indicates that the following or a similar statement will satisfy the disclosure requirement: "[name of affiliate/subsidiary] is not a bank, and securities offered by it are not backed or guaranteed by any bank nor are they insured by the FDIC". The regulation also provides that the disclosure which joint advertisements, promotions, or solicitations and "stuffers" must carry may be in a form and manner consistent with the advertising or other media utilized.

The final regulation thus sets forth some guidance to banks in terms of the content of disclosure but seeks to allow banks the flexibility to provide disclosure in the most concise, least burdensome fashion. This represents a compromise between comments which urged the FDIC not to adopt specific language for disclosure and comments which did not object to the FDIC doing so but requested that the required disclosure be as short as possible. The provision of the regulation which allows for disclosure to be made in a "form and manner consistent with the advertising or other media utilized" in the case of joint advertisements, promotions, or solicitations and stuffers is being adopted in response to comments which criticized the proposal for overlooking the fact that any disclosure must be tailored to the media used.

It is the FDIC's intent in monitoring compliance with the disclosure requirement to be as flexible as possible. So long as the basic message sought to be conveyed by the disclosure is set forth in a clear fashion, compliance with the regulation will be considered to have been met.

Timing and Placement of Disclosure

The final regulation provides that if the bank and its subsidiary or affiliate share the same or a similar name or logo, conduct business in the same location, jointly advertise, promote, or solicit, or the bank's subsidiary or affiliate places "stuffers" in the bank's mailings to its customers, disclosure must be made prominently, in writing, in

extent as though they were member banks, provides that a bank or any subsidiary or affiliate of a bank shall not publish any advertisement suggesting that the bank is in any way responsible for the obligations of its affiliates.

opening account documents and periodically (at least semiannually) in customer statements. As finally adopted, the regulation does not require that opening account documents carrying the disclosure be signed by the customer and retained. It was determined that to impose a signature and retention requirement would unduly raise costs. A bank should be prepared, however, to document upon examination that proper procedures, etc. are in place in order to assure that disclosure, as required by the regulation, is given.

The regulation further provides that disclosure may be made in confirmation sent to customers with respect to individual transactions in lieu of periodic disclosure through customer statements. Finally, the regulation provides that TV or radio advertisements, promotions, or solicitations which do not exceed 30 seconds in time need not contain the disclosure. Disclosure when required in TV advertisements may either be spoken or displayed.

As indicated above, under the final regulation joint advertisements and "stuffers" trigger the need for disclosure via opening account documents and customer statements or confirmations. In order to accommodate situations such as ones in which a bank and its subsidiary or affiliate enter into a joint advertising campaign, or use stuffers, on a one-time basis or decide to terminate all joint campaigns or use of stuffers in the future, the final regulation provides that disclosure in opening account documents and customer statements or confirmations need only be met for one year after all joint campaigns end and for only one year after the last "stuffer" is mailed out. The disclosure requirement terminates after the one year period, however, only if two semiannual disclosures to customers have been made during the one year period and only if no other circumstances are present which trigger disclosure. Absent language to this effect, the regulation might be interpreted to require endless disclosure in opening account documents and customer statements or confirmations once any joint advertising campaign or stuffers have been utilized.

The changes made in the final regulation with respect to the timing and placement of disclosure should provide for greater flexibility and reduce the burdens which were perceived to arise from the disclosure as originally proposed. The changes address the concern of some comments that the proposed rule would have prohibited the use of telephone marketing, would have unduly lengthened TV and radio advertisements thus increasing advertising costs, and comments objecting to the proposed requirement that all existing as well as new customers must receive the disclosure prior to entering into any transaction. Under the final regulation any new customer will receive disclosure upon the opening of an account and existing customers will receive disclosure either through confirmations or periodic customer statements. The FDIC thus believes that all customers will be fully apprised of with whom they are dealing and in what capacity and therefore that the possibility of customer confusion will be greatly reduced if not eliminated.

Effective Date of Amendments

Insured nonmember banks that established or acquired a securities subsidiary or became affiliated with a securities company prior to December 28, 1984 and which as of the effective date of the amendments conducted business in the same location as the subsidiary or affiliate or shared the same or a similar name of logo with the subsidiary or affiliate have until not later than June 1, 1988 to comply with the disclosure requirements. The delayed effectiveness of the disclosure requirements is designed to allow these institutions time to develop the disclosure documents as called for by the regulation. Inasmuch as changes have been made to the regulation to allow for a number of alternative ways in which disclosure can be made, and the regulation indicates that the content of disclosure may vary with the circumstances and the media utilized, the FDIC believes that the six months lead time should be sufficient to allow for compliance.

The deletion of the prohibition on the use of a common name or logo and the deletion of the separate entrance requirement are effective immediately upon publication in the **Federal Register.** The thirty days delayed effective date otherwise required under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*) has been waived pursuant to section 553(d)(1) of that Act which provides for waiver in the case of a substantive rule which grants or recognizes an exemption or relieves a restriction.

Outstanding Orders in Conflict With Regulation

Any insured nonmember bank that is presently subject to an outstanding order imposing a condition that the bank and its securities subsidiary or affiliate must have separate offices that share no common entrance except a common outer lobby or common corridor as well as any insured nonmember bank subject to an outstanding order imposing a condition prohibiting the bank and its securities subsidiary or affiliate from sharing a common name or logo is no longer subject thereto. The Board of Directors voted in conjunction with the adoption of the final amendment to rescind all such conditions and directed the Executive Secretary to send letters to all affected institutions modifying the affected orders.

Staff Assessment of Burdens and Practicality of Disclosure Requirements

As it is the Board of Director's desire to ensure bank safety and soundness with as little burden as possible, staff is instructed to, not later than eighteen months after these amendments take effect, prepare a report for the Board of Directors assessing the costs and burdens of compliance therewith and evaluating whether the amendments are adequately achieving their stated purpose.

Paperwork Reduction Regulatory Flexiblity Act Analysis

The Paperwork Reduction Act (44 U.S.C. 501 *et. seq.*) is inapplicable to the final rule as it does not establish any new record keeping or collection of information requirement nor amend any such existing requirement.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) the FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The FDIC's Board of Directors bases its conclusion on the belief that the final rule will reduce the costs (both monetary and competitive) that are associated with the existing prohibition on the use of common name or logo and the requirement for separate offices that share no common entrance.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 continues to read as follows:

Authority: 12 U.S.C. 1816; 12 U.S.C. 1818(a); 12 U.S.C. 1818(b); 12 U.S.C. 1819; 12 U.S.C. 1828(j)(2); 12 U.S.C. 1821(f)

§ 337.4 [Amended]

2. Footnote 4 to § 337.4(a)(2)(ii) is revised to read as follows:

[4] If the subsidiary conducts business in the same location in which the bank conducts business, the subsidiary must utilize

physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified so as to distinguish the subsidiary from the bank. The physically separate office or office space requirement only applies in areas to which the public has access.

3. Section 337.4 is amended by removing from § 337.4(a)(2) paragraph (iii) and footnote 5 to paragraph (iii), by redesignating paragraphs (iv), (v), (v), (vi), (vii), (viii), and (ix) as paragraphs (iii), (iv), (vi), (vii), and (viii) respectively and by redesignating footnote 6 as footnote 5.

4. Section 337.4(c) is amended by redesignating footnote 7 to § 337.4(c)(1) as footnote 6 and revising redesignated footnote 6 to read as follows:

[6] If the affiliate conducts business in the same location in which the bank conducts business, the affiliate must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified so as to distinguish the affiliate from the bank. The physically separate office or office space requirement only applies in areas to which the public has access.

5. Section 337.4 is amended by removing from § 337.4(c) paragraph (5) and footnote 8 to paragraph (5) and redesignating paragraph (6) as paragraph (5).

6. Section 337.4 is amended by redesignating footnotes 9, 10, 11, and 12 as 7, 8, 9, and 10.

7. Section 337.4 is amended by revising § 337.4(h) to read as follows:

* * * * *

(h) *Disclosure*—(1) *Applicability.* Any subsidiary of an insured nonmember bank required by §337.4(b)(1)(ii) to be a bona fide subsidiary, and any affiliate of an insured nonmember bank whose affiliation with such a bank is governed by § 337.4(c), which: (i) shares the same or a similar name or logo with the insured nonmember bank, (ii) conducts business in the same location in which the insured nonmember bank conducts business, (iii) advertises or promotes particular securities or solicits purchasers for particular securities in advertisements, promotions, solicitations or other similar communications in which the insured nonmember bank also advertises or promotes its services, or (iv) places or causes to be placed in communications from the insured nonmember bank to the bank's customers advertisements, promotions or solicitations concerning particular securities, must comply with the disclosure requirements of paragraphs (h)(1)(ii) and (h)(1)(iii) of this section in order for the subsidiary to meet the definition of a bona fide subsidiary and in order for the affiliation to be permissible. Any insured nonmember bank that established or acquired a securities subsidiary or become affiliated with a securities company prior to December 28, 1984 and which as of December 14, 1987, conducted business in the same location as its securities subsidiary or affiliate or shared the same or a similar name or logo with its securities subsidiary or affiliate has until not later than June 1, 1988 to comply with paragraphs (h)(1)(ii) and (h)(1)(iii) of this section.

(2) *Content of Disclosure.* Sections 337.4(a)(2)(viii) and 337.4(c)(5) notwithstanding, any subsidiary and/or affiliate of an insured nonmember bank described in paragraph (h)(1)(i) of this section must disclose to its customers and prospective customers that securities recommended, offered or sold by or through the subsidiary and/or affiliate are not FDIC insured deposits (unless otherwise indicated), that such securities are not guaranteed by, nor are they obligations of, the bank, and that the subsidiary and/or affiliate and the bank are separate organizations. The following or a similar statement will satisfy the disclosure requirement: "[name of affiliate/subsidiary] is not a bank and securities offered by it are not backed or guaranteed by any bank nor are they insured by the FDIC."

(3) *Timing and Placement of Disclosure.* In order for any subsidiary or affiliate of an insured nonmember bank described in paragraph (h)(1)(i) to comply with paragraph (h)(2)(ii) the subsidiary/affiliate must make disclosure to its customers prominently, in writing, in opening account documents and periodically (at least semiannually) in customer statements. Disclosure may be made in confirmations in lieu of customer statements. In the case of joint advertisements, promotions, or solicitations and advertisements, promotions, or solicitations placed in bank communications, the advertisement, promotion, or solicitation must carry the requisite disclosure. Disclosure may be in a form and manner consistent with the advertising or other media utilized. Television or radio advertisements which do not exceed 30 seconds in length need not contain disclosure. Disclosure in television advertisements may either by spoken or displayed. All disclosures must be prominent and clearly legible. Disclosure in opening account documents and periodic disclosure in customer statements or confirmations is only required for one year after the bank and its subsidiary/affiliate cease to jointly advertise, promote or solicit and for one year after advertisements, promotions, or solicitations are placed in bank communications with bank customers provided, however, that at least two semiannual disclosures must have been made during that one year period.

(4) It is considered an unsafe and unsound banking practice for an insured nonmember bank to: (i) share the same or a similar name or logo with a securities subsidiary that is required to be a bona fide subsidiary or an affiliate that is subject to the provisions contained in § 337.4(c); (ii) conduct business in the same location as any such subsidiary or affiliate; (iii) jointly advertise or promote its services in an advertisement, promotion, or solicitation concerning particular securities made by such a subsidiary or affiliate; or (iv) permit such a subsidiary or affiliate to place advertisements, promotions, or solicitions concerning particular securities in communications sent by the bank to the bank's customers, unless the disclosure requirements of paragraphs (h)(2) and (h)(3) are met. Failure to comply with paragraphs (h)(2) and (h)(3) will subject the insured nonmember bank to appropriate administrative action including, but not necessarily limited to, an order to cease and desist use of the same or a similar name or logo as the subsidiary/affiliate, the conduct of business in the same location as the subsidiary/affiliate, the making of joint advertisements, or the placement of the subsidiary's/affiliate's promotions, advertisements, or solicitations in the bank's communications with its customers.

By Order of the Board of Directors.

Dated at Washington, DC, this 8th day of December 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-28627 Filed 12-11-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-124-AD; Amdt. 39-5808]

Airworthiness Directives; British Aerospace Model BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model BAe 125 series airplanes, which requires relocation of the 115V. AC stall vane heater power circuit breakers, and modification of the electronic flight instrument system power supply cables. This amendment is prompted by a report of cable chafing, which resulted in the loss of certain flight instruments, the engine fuel computer, and the windscreen alternator. This condition, if not corrected, could result in the loss of critical flight instruments during flight.

EFFECTIVE DATE: February 2, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires relocation of the 115V. AC stall vane heater power circuit breakers, and modification of the electronic flight instrument system power supply cables on British Aerospace Model BAe 125 series airplanes, was published in the **Federal Register** on September 30, 1987 (52 FR 36583).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph B. of the final rule has been revised to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously mentioned.

It is estimated that 65 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $31,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive.

British Aerospace: Applies to all Model BAe 125 800A and 800B series airplanes listed in British Aerospace BAe 125 Service Bulletin 24-259-(3171B), dated November 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of critical flight instruments, accomplish the following:

A. Within the next three months after the effective date of this AD, relocate the 115V. AC stall vane heater power circuit breakers, and modify power supply cable runs for the electronic flight instrument systems in accordance with the accomplishment instructions of British Aerospace BAe 125 Service Bulletin 24-259-(3171B), dated November 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 2, 1988.

Issued in Seattle, Washington, on December 3, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28589 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71020-7220]

Removal of Validated License Controls on Jig Grinders

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which specifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain jig grinders described in entry 1091A on the CCL according to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies in any axis greater (coarser) than or equal to ±0.002 mm (0.000080 in.) for machines with total length of axis travel equal to or less than 300 mm (12 in.) and ±(0.002 + (0.001 × ((L-300)/300))) mm (with L expressed in mm) [or 0.000080 + (0.000040 × ((L-12)/12)) in. (with L expressed in inches)] for machines with total length of axis travel, L, greater than 300 mm (12 in.) can be exported under General License G-DEST to countries listed in Supplement No. 2 or 3 to 15 CFR Part

373. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies greater (coarser) than ±0.005 mm (0.00020 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.) and ±(0.005 + (0.002 × ((L–300)/300))) mm (with L expressed in mm) [or 0.0002 + (0.000080 × ((L–12)/12)) in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.) require a validated export license only to destinations in Country Groups QSWYZ.

Notice of the foreign availability determination on this equipment has been published previously (52 FR 46634, Dec. 9, 1987).

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202 377–8550.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401*et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1091A is amended by revising the *Validated License Required* and *Reason for Control* paragraphs to read as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 376.11 for special information to include on the validated license application and reexport request.)

Controls for ECCN 1091A

* * * * *

Validated License Required: Country Groups QSTVWYZ. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies in any axis greater (coarser) that or equal to ±0.002 mm (0.000080 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.) and ±(0.002 + (0.001 × ((L–300)/300))) mm (with L expressed in mm) [or 0.000080 + (0.000040 × ((L–12)/12)) in. (with L expressed in inches)] for machines with total length of axis travel, L, greater than 300 mm (12 in.) can be exported under General License G–DEST to countries listed in Supplement No. 2 or 3 to 15 CFR Part 373. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies greater (coarser) than ±0.005 mm (0.0002 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.) and ±(0.005 + (0.002 × ((L–300)/300))) mm (with L expressed in mm) [or 0.0002 + (0.000080 × ((L–12)/12)) in. (With L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.) require a validated export license only to destinations in Country Groups QSWYZ.

* * * * *

Reason for Control: National security; nuclear non-proliferation, except exports to those countries listed in Supplement No. 2 or 3 to Part 373. Jig grinders that may be exported under General License G–DEST only to countries listed in Supplement No. 2 or 3 to Part 373, as described in the *Validated License Required* paragraph of this entry, are controlled only for nuclear non-proliferation reasons.

* * * * *

Dated: December 9, 1987

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 87–28644 Filed 12–11–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 209

[DOD Directive 4120.18]

DOD Metrication Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR Part 209, requires that the nonuse of the metric system in new designs be specifically approved, and directs Components to prepare needed metric specifications. The long operating life of weapon systems and the inevitable conversion of industry to metrics require DOD systems be increasingly metric if they are to be adequately supported in the future. Likewise, interoperability, standardization, and cooperative

development efforts with allies dictate the use of a common measurement system. The Defense Industry has indicated its readiness to provide metric equipment if asked.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Colonel T. Mansperger, Office of the Assistant Secretary of Defense (Production and Logistics), The Pentagon, Washington, DC 20301-8000, telephone (202) 695-7915.

List of Subjects in 32 CFR Part 209

Armed forces, Metric system.

Accordingly, 32 CFR Part 209 is revised to read as follows:

PART 209—DOD METRICATION PROGRAM

Sec.

Authority: 15 U.S.C. 205a-k (Pub. L. 94-168).

§ 209.1 Reissuance and purpose.

This part reissues 32 CFR Part 209 to reflect the reorganization within the Office of the Secretary of Defense (OSD) and the refinements and reissuance of the Federal metric policy in 15 CFR Part 19, Subpart B. Under Public Law 94-168, U.S. national policy of coordinating and planning the increasing use of the metric system was established. This part establishes policies and procedures to maximize the benefits of using the metric system while minimizing cost and disruption of operations.

§ 209.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Organization of the Joint Chiefs of Staff (OJCS), the Military Departments, Inspector General of the Department of Defense (IG, DOD) and the Defense Agencies (hereafter referred to collectively as "DOD Components").

§ 209.3 Definition.

The Metric System of Measurement. In this part is the International System of Units (or SI from the French "Le Système International d'Unites") as established by the General Conference on Weights and Measures in 1960, and as interpreted or modified for the United States by the Secretary of Commerce. Metric units used within the Department of Defense shall be as described in Federal Standard 376. In this part the terms metric, metric system, and metric units are used interchangeably with the term SI.

§ 209.4 Policy.

(a) It is DOD policy to use the metric system in all of its activities, consistent with security, operational, economical, technical, logistical, and safety requirements.

(b) The metric system shall be used in all those elements of new defense systems requiring new design, which are pre-Milestone 1, unless such use may be justified as not being in the best interest of the Department of Defense. The nonuse of metric units in a major system (as defined in DOD Directive 5000.1 [1]) shall require the approval of the Under Secretary of Defense for Acquisition (USD(A)). The rationale (including a cost and/or schedule analysis or trade-off study) for such nonuse shall be included in the Justification for Major System New Starts or, for less-than-major systems, in the initial program planning.

(c) DOD Components shall adopt the metric system in:

(1) Areas where industry has made significant progress in the design and production of metric products.

(2) Developing materiel to be used jointly with the North Atlantic Treaty Organization (NATO STANAG 4183) and other allied nations.

(3) Developing military materiel that has potential for significant foreign sales or multinational joint acquisition programs.

(4) Areas where defense industry preparedness or defense production readiness may be enhanced.

(d) Emphasis shall be placed on developing metric specifications, standards, and other general purpose technical data to support the development of Defense systems, equipment and material. January 1, 1990 is established as the target date for the availability of metric specifications and standards necessary to satisfy the metrication policies of this Directive. All DOD standardization documents shall be reviewed for metric applicability. The cognizant standardization activity shall identify documents for which a metric version is needed. Existing non-Government metric standards shall be adopted when they satisfy DOD requirements. Non-Government standards preparing activities should be encouraged to prepare metric documents suitable for adoption by DOD when practical. When a needed metric document or metric version of an inch-pound document is not available from non-Government sources, the cognizant DOD standardization activity shall prepare the document. Documents should be prepared so to take advantage of opportunities promoting rationalization and simplification of relationships, improvements of design, reduction of size variations, and increases in economy.

§ 209.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition (USD(A)) shall be the approval authority for the nonuse of the metric system in major systems.

(b) The Assistant Secretary of Defense for Production and Logistics (ASD(P&L)) shall:

(1) Provide direction and guidance in the application and use of the metric system of measurement.

(2) Establish the DOD Metrication Steering Group (MSG) within the Production and Support Committee to plan and coordinate DOD transition to the metric system and to advise DOD Components on matters relating to metrication.

(3) Appoint a DOD representative to the Federal Interagency Committee on Metric Policy (ICMP).

(4) Appoint the DOD Metric Coordinator to chair the MSG and represent DOD on the Metrication Operating Committee of the ICMP.

(5) Establish procedures for expediting the preparation, coordination, and approval of new metric specifications and standards.

(c) The Heads of DOD Components shall:

(1) Designate specific senior officials to be responsible for approving any requests not to use the metric system in those elements of less than major new systems requiring new design.

(2) Designate an office to manage metric conversion activities.

(3) Designate a primary and alternate person to represent the DOD Component on the MSG.

(4) Ensure that activities responsible for preparing and coordinating metric standardization documents are supported adequately.

(5) Ensure that personnel are provided education on the metric system and training, as needed, in specific metric practices and usages.

(6) Evaluate and monitor the impact of the use and nonuse of the metric system in equipment and procedures on operations, safety, and interoperability.

(7) Ensure that regulations and procedures do not unduly restrict use of the metric system, and where

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

applicable, ensure that regulations and procedures ease transition to the metric system.

(d) The Defense Product Standards Office under the Office of Deputy Assistant Secretary of Defense (Production Support) shall provide an Executive Secretariat to the DOD MSG and administrative support.

§ 209.6 Procedures.

(a) Physical and operational interfaces between metric items and inch-pound items shall be designed to ensure interoperability.

(b) Existing designs dimensioned in inch-pound units shall not be converted to metric units, unless determined by the procuring activity to be necessary or advantageous. Unnecessary retrofit of existing systems with new metric components shall be avoided. The measurement units in which a system originally is designed shall be retained for the life of the system.

(c) During the metric transition phase, use of hybrid metric and inch-pound designs may be necessary and shall be acceptable. Material, components, parts, subassemblies, and semifabricated materials that are of commercial design shall be specified in metric units when economically available and technically adequate, or when otherwise determined by the procuring activity to be in the best interest of DOD. Bulk materials shall be specified and accepted in metric units, unless being acquired for use in materiel designated in inch-pound units.

(d) Defense Acquisition Board (DOD Instruction 5000.2 [2]) and Major Automated Information System Review Council (DOD Instruction 7920.2 [3]) reviews and associated cost estimates and decision papers shall address the use of SI including the reasons for nonuse.

(e) Technical reports, studies, and position papers (except those on items dimensioned in inch-pound units) shall use metric units of measurement. Inch-pound units may be cited in parentheses. The use of tables in documents to convert specific dimensions in the document from one system of measurement to the other is acceptable. Use of dual dimension (both metric and inch-pound) on drawings shall be avoided.

(f) When purchasing new shop, laboratory, and general purpose test equipment, DOD Components shall specify features that shall allow direct measurement in metric units or both metric and inch-pound units.

(g) Metric specifications and standards shall be marked in accordance with MIL-STD-961 and MIL-STD-962, respectively.

(h) DOD representatives shall participate actively in the development of U.S. and international standards using the metric system. NATO and other international metric standards shall be used to the maximum practical extent. If a U.S. metric standard is established with greater definition and restriction than the international standard, the U.S. standard shall be used.

§ 209.7 Reporting requirements.

The MSG shall develop an annual report of metric activities during the past fiscal year for submission to the USD(A) by January 15 of each year. The report shall be based on reports submitted by each of the member DOD Components. DOD Component reports shall describe major accomplishments, recommendations, metric standardization documents prepared, and significant metric systems or equipment initially being developed or acquired. The required format and content of the DOD Component reports shall be specified by the MSG Chairman. DOD Component reports shall be submitted to the MSG Chairman by November 30 of each year. In accordance with DoD Directive 7750.5 [4], the "Annual Report of Metric Activities" is assigned Report Control Symbol DD-P&L (A) 1780.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1987.

FR Doc. 87-28607 Filed 12-11-87; 8:45 am]

BILLING CODE 3810-01-M

[2] See footnote 1 to § 209.4(b).

[3] See footnote 1 to § 209.4(b).

[4] See footnote 1 to § 209.4(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-87-21]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of New Smyrna Beach, the Coast Guard is modifying regulations governing the Coronado Beach and Harris Saxon drawbridges at New Smyrna Beach by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on January 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: On June 22, 1987, the Coast Guard published proposed rule (52 FR 23472) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated July 6, 1987. In each notice, interested persons were given until August 6, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Twenty-five comments were received. Most discussed the need to keep vehicular traffic flowing on both bridges; several commented on the need to expedite passage of emergency vehicles and to synchronize the openings of both bridges to accommodate vessel speeds. Closure of the draw for emergency vehicles is addressed in 33 CFR 117.31. Since the vertical clearance of the Coronado Beach bridge is 10 feet lower, many vessels can pass beneath the Harris Saxon bridge but still require opening of the Coronado Beach bridge. This obviates, in large measure, the need to synchronize bridge openings. Ten commercial vessel operators and eight recreational boaters commented on the difficulty experienced in maintaining vessel control while waiting for the Coronado Beach bridge to open due to swift currents, high winds, dangerous shoals, and an expanding number of waterfront facilities near the bridge. The local Coast Guard station investigated the situation and confirmed the limited holding area and strong currents and recommended vessels be passed through the Coronado Beach bridge with minimal delay.

Three commentors recommended the timed openings of the Harris Saxon bridge be year round instead of limited to the months of April, May, October, November and December. Analysis of bridge opening data does not justify extending the regulations beyond these months of seasonal waterway transits

when openings are significantly increased.

The Coast Guard believes the proposed rules are a reasonable compromise of the original request from the City and the needs of navigation on the Intracoastal Waterway. No new information has been presented which justifies changing the proposed regulation. The final rule is unchanged from the proposed rule published on June 22, 1987.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.261 (h) and (i) are revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St Marys River to Key Largo.

* * * * *

(h) *Coronado Beach bridge, mile 845 at New Smyrna Beach.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. daily, the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour.

(i) *Harris Saxon bridge, mile 846.5 at New Smyrna Beach.* The draw shall open on signal; except that, from October 1 to December 31 and April 1 to May 31, from 9 a.m. to 6 p.m. daily, the draw need open only on the hour and half-hour.

* * * * *

Dated: December 2, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87–28632 Filed 12–11–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3291–8]

Approval and Promulgation of Implementation Plans; New Hampshire Sulfur-in-Fuel; James River Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision raises the sulfur-in-fuel limit at the James River Corporation, Groveton, from 1.0% sulfur by weight to 2.2%. This source was excluded from recent revisions to the statewide sulfur-in-fuel limitations. No change in actual emissions will occur as a result of this revision, and allowable emissions will be reduced through new restrictions on operation. The intended effect of this revision is to federally approve the State's request that this source be subject to the state regulation which allows the burning of higher sulfur fuel.

EFFECTIVE DATE: January 13, 1988.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2311, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit EPA Library, 401 M Street SW., Washington, DC 20460; and the New Hampshire Air Resources Division, 64 N. Main Street, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Susan Kulstad, (617) 565–3226; FTS 835–3226.

SUPPLEMENTARY INFORMATION: On September 22, 1986, EPA published a Notice of Proposed Rulemaking for regulatory changes to the New Hampshire State Implementation Plan that would allow an increase in the sulfur-in-fuel content at the James River Corporation, Groveton, from no more than 1.0% sulfur by weight to no more than 2.2% (51 FR 33624). This source, a pulp and paper mill, was excluded from previously approved revisions to the sulfur-in-fuel limit for Coos County pending additional technical support. The New Hampshire Air Resources Agency has not demonstrated that there will be no violations of the National Ambient Air Quality Standards for sulfur dioxide when this source is burning the 2.2% sulfur fuel.

One public comment was received on the Notice of Proposed Rulemaking. The commenter pointed out the absence of an analysis of impacts in the building cavity region. Such an analysis may be required because some of the stacks at the mill are shorter than Good Engineering Practice (GEP) height and thus the plumes may be entrained into this cavity region. EPA has since performed a cavity analysis, indicating that this region lies on the James River Corporation's property. The New Hampshire agency has submitted evidence that fencing precludes public access from the cavity region. EPA has reviewed the New Hampshire submittal (more fully discussed in the Notice of Proposed Rulemaking) and, with the addition of the building cavity analysis, finds it acceptable.

Final Action

EPA is approving a revision for the James River Corporation, Groveton, New Hampshire, submitted by the New Hampshire Air Resources Agency on January 22, 1986. This revision approves the James River Corporation, Groveton, to burn fuel with a limit of no more than 2.2% sulfur by weight. EPA is approving selected conditions of five Permits to Operate to ensure the 2.2% sulfur by weight limit is met, including daily fuel use restrictions in four of the permits, issued by the New Hampshire Air Resources Agency to the James River Corporation, Groveton. The New Hampshire agency submitted these permit conditions to EPA for approval and incorporation into the SIP as part of this revision.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 2, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart EE—New Hampshire

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1520, is amended by adding paragraph (c)(38) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(38) Approval of a revision to allow the James River Corporation, Groveton, to burn oil having a 2.2% sulfur-by-weight limit in accordance with previously approved SIP regulation CHAPTER Air 400, Section Air 402.02, submitted on January 22, 1986. This source was previously excluded from revisions pertaining to New Hampshire regulation CHAPTER Air 400, Section Air 402.02 (identified at paragraph (c)(26) of this section), but New Hampshire has now submitted adequate technical support for approval.

(i) Incorporation by reference.

(A) The conditions in the following five Permits to Operate issued by the State of New Hampshire Air Resources Agency on September 6, 1985, to the James River Corporation—Groveton Group: Permit No. PO–B–1550, Conditions 5B, 5C, and 5D; Permit No. PO–B–213, Conditions 2 and 5A; Permit No. PO–B–214, Conditions 2 and 5A; Permit No. PO–B–215, Conditions 2 and 5A; and Permit No. PO–BP–2240, Condition 5B. These conditions limit the sulfur-in-fuel content at the James River Corporation, Groveton, to 2.2% sulfur by weight.

3. Section 52.1525 is amended by adding the following entry to the table in numerical order to read as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.

Title/Subject	State Citation Chapter	Date adopted by state	Date approved by EPA	Federal Register Citation	52.1520	Comments
Sulfur content limit in fuels	CH Air 400		12/14/87	52 FR 47392	(c)(38)	Approval of 2.2% sulfur-in-oil limit for James River, Groveton.

[FR Doc. 87–26557 Filed 12–11–87; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–44

[FPMR Temp. Reg. H–26]

Donation of Federal Surplus Personal Property To Nonprofit Providers of Assistance To Homeless Individuals

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation establishes policies and procedures for donating Federal surplus personal property to programs that provide assistance to the homeless. It is issued to comply with section 502 of the Stewart B. McKinney Homeless Assistance Act, which makes nonprofit tax-exempt providers of assistance to homeless individuals eligible for donations of Federal surplus personal property. This regulation will ensure that property usable for providing food, shelter, or other services to homeless individuals is made available to providers of assistance to the homeless.

DATE: *Effective date:* December 14, 1987.

Expiration date: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557–1240.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–44

Government property management, Reporting requirements, Surplus Government property.

1. The authority citation for Part 101–44 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter H to read as follows:

General Services Administration, Federal Property Management Regulations, Temporary Regulation H–26

November 24, 1987.

To: Heads of Federal agencies.

Subject: Donation of Federal surplus personal property to nonprofit providers of assistance to homeless individuals.

1. *Purpose.* This regulation expands donation program eligibility to include nonprofit, tax-exempt providers of assistance to homeless individuals. It also serves as notice to the State surplus property agencies that they are required to make information available about surplus personal property which may be used for providing food, shelter, or supportive services to homeless individuals.

2. *Effective date.* This regulation is effective upon publication in the **Federal Register.**

3. *Expiration date.* This regulation expires September 30, 1988, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* The provisions of this regulation apply to all State agencies as defined in § 101–44.001–14.

5. *Background.* The Stewart B. McKinney Homeless Assistance Act amended section 203(j)(3)(B) of the Federal Property and Administrative Services Act of 1949, as amended, to authorize donations of Federal surplus

personal property to nonprofit, tax-exempt providers of assistance to homeless individuals. It also requires GSA to transmit an annual report to the Congress describing programs administered by the agency which assist homeless individuals, impediments to the use of these programs by homeless individuals, and efforts made by GSA to increase opportunities for homeless individuals to obtain food, shelter, and supportive services.

6. *Explanation of changes.*

a. Section 101–44.202 is amended by revising paragraph (c)(5) to read as follows:

§ 101–44.202 State plan of operation.

* * * * *

(c) * * *

(5) *Financing and service charges.* The State plan shall set forth the means and methods by which the State agency will be financed.

When the State agency is authorized to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges shall be set forth in the plan. The charges shall be fair and equitable and based on services performed by the State agency, including but not limited to screening, packing, crating, removal, and transportation. When the State agency provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the charge levied by the State agency shall be minimal. The State plan shall provide for minimal charges to be assessed in such cases and include the bases of computation. When property is made available to nonprofit providers of assistance to homeless individuals, the State plan shall provide for this property to be distributed at a nominal cost for care and handling of the property. The plan of operation shall set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds, are to be used for the operation of the State agency and the benefit of participating donees. Service charge funds may be used to cover direct and indirect costs of the State agency's operation, to purchase necessary equipment, and to maintain a reasonable working capital reserve. Such funds may be deposited or invested as permitted by State law, provided the plan of operation sets forth the types of depositories and/or investments contemplated. Service charge funds may be used for the purpose of rehabilitating donable surplus property, including the purchase of replacement parts. Subject to State authority and the provisions of the plan of operation, the State agency may expend service charge funds to acquire or improve office or distribution center facilities. When such acquisition or improvements are contemplated, the plan shall set forth what disposition is to be made of any financial assets realized upon the sale or other disposal of the facilities. When refunds of service charges in excess of the State agency's working capital reserve are to be made to participating donees, the plan shall so state and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.

* * * * *

b. Section 101–44.207 is amended by adding paragraphs (a)(12.1) and (18.1) and revising paragraph (c) to read as follows:

§ 101–44.207 Eligibility.

* * * * *

(a) * * *

(12.1) "Homeless individual" means an individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is: (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. For purposes of this regulation, the term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

* * * * *

(18.1) "Provider of assistance to homeless individuals" means a public agency or a nonprofit, tax-exempt institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals, as defined in paragraph (a)(12.1) of this section. Property acquired through the donation program by such institutions or organizations must be used exclusively in their program(s) for providing assistance to homeless individuals.

* * * * *

(c) *Eligibility of nonprofit tax-exempt activities.* Surplus personal property may be donated through the State agency to nonprofit tax-exempt activities, as defined in this section, within the State, such as:

(1) Medical institutions;

(2) Hospitals;

(3) Clinics;

(4) Health centers;

(5) Providers of assistance to homeless individuals;

(6) Schools;

(7) Colleges;

(8) Universities;

(9) Schools for the mentally retarded;

(10) Schools for the physically handicapped;

(11) Child care centers;

(12) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations;

(13) Museums attended by the public;

(14) Libraries, serving free all residents of a community, district, State or region; or

(15) Organizations or institutions that receive funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under Title IV and Title XX of the Social Security Act, or under Titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

* * * * *

c. Section 101–44.208 is amended to revise paragraph (b) to read as follows:

§ 101–44.208 Property distributed to donees.

* * * * *

(b) *Donation purpose.* At the time donable surplus property is acquired by a donee, the donee's authorized representative shall indicate on the State agency's distribution document the primary purpose for which the property is to be used. In the case of public agencies, such usage could be for public purposes, such as conservation, economic development, education, parks and recreation, public health, programs for providing assistance to homeless individuals, public safety, museums, State Indians, or programs for older individuals. When the property is to be used for a combination of these purposes or for some other public purpose, the distribution document shall so indicate. With respect to nonprofit institutions or organizations, the purpose shall be shown as education, public health, programs for providing assistance to homeless individuals,

museums, or programs for older individuals.

* * * * *

d. Section 101–44.4701 is amended to revise paragraph (b) to read as follows:

§ 101–44.4701 Reports.

* * * * *

(b) The Administrator of General Services will submit by October 21, 1987, and annually thereafter, a report to the Congress that describes each program that is administered by the agency to assist homeless individuals and the number of homeless individuals served by each program; impediments, including any statutory and regulatory restrictions, to the use of these programs by homeless individuals; and efforts made by GSA to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

* * * * *

e. Section 101–44.4902–3040–1 is amended by adding a paragraph at the end of the section to read as follows:

§ 101–44.4902–3040–1 Instructions for preparing GSA Form 3040.

* * * * *

Remarks—Use this area to report on donations to programs that provide assistance to homeless individuals. Include the total amount of property donated, the number of providers that received property, and the number of individuals (estimated if not known) served by each provider. If no donations were made to providers during the report quarter, an indication to that effect should be made.

7. *Effect on other directives.* This regulation modifies portions of the regulations appearing at FPMR 101–44.202, 101–44.207, 101–44.208, 101–44.4701, and 101–44.4902–3040–1.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–28602 Filed 12–11–87; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401 and 2402

[Docket No. R–87–1360; FR–2422]

HUD Acquisition Regulations; Revised Definition of "Senior Procurement Executive"

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the HUD Acquisition Regulations (HUDAR) to revise the definition of "Senior Procurement Executive" in HUDAR 2402.101, to add 2401.601–70 to the HUDAR, and to redesignate various sections in HUDAR Subpart 2401.6. The purpose of this rule is merely to make technical revisions to the current HUDAR.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Gladys G. Gines, Deputy Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755–5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). HUD promulgated its regulations to implement the FAR on March 1, 1984 (49 FR 7696). The most import revision to the HUDAR, which included revisions to implement the Competition in Contracting Act of 1984, was promulgated in the **Federal Register** of November 8, 1985 (50 FR 46572). Those revisions included a definition of "Senior Procurement Executive" in HUDAR 2402.101.

This rule shortens the definition of "Senior Procurement Executive" in 2402.101, adds a new 2401.601–70, and redesignates various sections of HUDAR Subpart 2401.6 to reflect new 2401.601–70. HUD is amending Subpart 2401.6 (Contracting Authority and Responsibilities) to reflect the role and responsibilities of the Senior Procurement Executive which previously were contained under Part 2402 (Definitions of Words and Terms). HUD believes that Subpart 2401.6 is a more appropriate part of the HUDAR in which to describe the substantive responsibilities of the "Senior Procurement Executive" than is Part 2402.

The Department has determined that this document need not be published as a proposed rule, as generally is required by the Administrative Procedure Act. This rule merely makes technical revisions to the current HUDAR.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of section; 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule contains only technical changes to the definition of "Senior Procurement Executive" in HUDAR Parts 2401 and 2402.

HUD has determined that since this rule constitutes a minor revision of the HUDAR, it qualifies for a categorical exclusion under 24 CFR 50.20(k) from HUD's regulations implementing the National Environmental Policy Act (NEPA). This rule merely provides technical revisions to the HUDAR and shifts the location of the definition of "Senior Procurement Executive".

This final rule was not listed in the Department's Seminannual Agenda of Regulations published on October 26, 1987 (52 FR 40358).

List of Subjects in 48 CFR Parts 2401 and 2402

Government procurement, Reporting and recordkeeping requirements.

Accordingly, the Department of Housing and Urban Development amends Title 48, Chapter 24 of the Code of Federal Regulations as follows:

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Part 2401 continues to read as follows:

Authority: Section 205(c) of the Federal Property and Aministrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. HUDAR 2401.601-70, 2401.601-71, 2401.601-72 and 2401.601-73 are redesignated as 2401.601-71, 2401.601-72, 2401.601-73, and 2401.601-74 respectively.

3. A new HUDAR 2401.601-70 is added, to read as follows:

2401.601-70 Senior Procurement Executive.

The Assistant Secretary for Administration is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures, except for internal procedures related to programmatic procurements of the Government National Mortgage Association and the Acquired Property program under the Assistant Secretary for Housing-Federal Housing Commissioner. The Senior Procurement Executive also is responsible for the development of procurement systems, evaluation of systems in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement systems meet approved criteria.

PART 2402—DEFINITIONS OF WORDS AND TERMS

4. The authority citation for 48 CFR Part 2402 continues to read as follows:

Authority: Section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. HUDAR 2402.101 is amended by revising the definition of "Senior Procurement Executive" to read as follows:

2402.101 Definitions.

* * * * *

"Senior Procurement Executive"—means the Assistant Secretary for Administration. The Senior Procurement Executive's responsibilities are stated in HUDAR 2401.601-70.

Dated: December 1, 1987.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 87-28513 Filed 12-11-87; 8:45 am]

BILLING CODE 4210-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[Acquisition Circular AC-87-3]

Monitoring Contractor Compliance With Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends Part 519 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to provide uniform procedures for monitoring contractor compliance with subcontracting plans and for reporting actions under section 211 of Pub. L. 95-507. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

DATES: *Effective Date:* December 16, 1987.

Expiration Date: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4765.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with statutory provisions is an urgent and compelling circumstance that makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule implements existing statutory requirements that primarily pertain to GSA's internal operating procedures. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 519

Government procurement.

1. The authority citation for 48 CFR Part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 519 is amended by the following Acquisition Circular.

General Services Administration Acquisition Regulation—Acquisition Circular (AC-87-3)

To: All GSA Contracting Activities

Subject: Monitoring contractor compliance with subcontracting plans.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), to provide uniform procedures for monitoring contractor compliance with subcontracting plans and for reporting contract actions under Section 211 of Public Law 95-507.

2. *Background.* Public Law 95-507 established a subcontracting plan requirement for all Federal contracts over $500,000 ($1 million for construction) with some exceptions. FAR 19.706 assigns responsibility for monitoring, evaluating, and documenting contractor compliance with the plans to the administrative contracting officer. In GSA, contract administration may be performed by the contracting officer who awarded the contract or it may be delegated to an administrative contracting officer. In view of this, GSA needs uniform procedures for monitoring contractor compliance with subcontracting plans and for reporting contract actions under section 211 of Public Law 95-507.

3. *Effective date.* December 16, 1987.

4. *Expiration date.* This Circular expires June 16, 1988, unless canceled earlier.

5. *Reference to regulation.* Section 19.706 of the Federal Acquisition Regulation and Section 519.770 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

(a) Section 519.706-70 is added to read as follows:

§ 519.706-70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan shall be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor timely receipt of SF 294 and/or SF 295 reports and review the reports for progress in meeting subcontracting plan goals. If goals are not met, the contractor must be required to explain the shortfall on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals.

(c) In the case of company-wide plans approved by GSA, the first contracting officer who enters into a contract with a company

during the company's fiscal year shall approve the plan and shall monitor receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(d) In the case of company-wide plans approved by another agency, the first GSA contracting officer entering into a contract with the company during the company's same fiscal year in which the plan was approved shall require the contractor to submit the SF 295 report and shall monitor receipt of the report. No other monitoring of this plan is required by GSA.

(e) Contractor compliance with plans must be documented in accordance with FAR 19.705–6 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case of noncompliance, the contracting officer shall notify the Office of Small and Disadvantaged Business Utilization (AU) through the appropriate Small Business Technical Advisor (SBTA).

(b) Section 519.770–3 is added to read as follows:

§ 519.770–3 Reporting on contractual actions under section 211 of Public Law 95–507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded in excess of $500,000 ($1 million for construction) requiring subcontracting plans must be prepared and submitted as indicated below. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required.

(1) *Regional contracting offices.* The reports must be submitted to the regional Business Service Centers (BSC's) by the 10th calendar day after the end of each quarter. The BSC's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(2) *Central office contracting offices.* The reports must be submitted to the appropriate SBTA by the 10th calendar day after the end of each month. The SBTA's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

Reporting Office ———————
Quarter beginning ———————
Quarter ending———————

Report on Contracting Actions Under Section 211 of Public Law 95–507

(contracts estimated or actual value over $500,000 [$1 million for construction])

Note.—Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction)
No. ———————
Dollar value ———————
2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans
No. ———————
Dollar value ———————
3. Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705–2).
No. ———————
Dollar value ———————

(End of format)

Dated: December 4, 1987.

Patricia A. Szervo,

Associate Administrator for Aquisition Policy.

[FR Doc. 87–28637 Filed 12–11–87; 8:45 am]
BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 52, No. 239
Monday, December 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the September 1987 Regulatory Agenda. The Agenda is a quarterly compilation of all rules on which the NRC has proposed action, or is considering action, as will as those on which the NRC has recently completed action. In addition, the agenda includes all petitions for rulemaking that have been received and are pending disposition by the Commission. The agenda is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESS: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 6, No. 3, is available for inspection and copying at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Single copies of the report may be purchased from the U.S. Government Printing Office (GPO). Customers may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–7086.

Dated at Bethesda, Maryland, this 9th day of December 1987.

For The Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87–28646 Filed 12–11–87; 8:45 am]
BILLING CODE 7590–01–M

10 CFR Part 61

Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Application of Quality Assurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance document: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is requesting comments on NUREG–1293 entitled "Quality Assurance Guidance for a Low-Level Radioactive Waste Disposal Facility." This document proposes guidance for the preparation of a license application for disposal of low-level radioactive waste.

DATE: The comment period expires February 15, 1988.

ADDRESSES: Send written comments to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Copies of all comments received by the NRC may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies of NUREG–1293 entitled "Quality Assurance Guidance for a Low-Level Radioactive Waste Disposal Facility" may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Regulatory Branch, Division of Low-Level Waste Management of Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427–4529.

SUPPLEMENTARY INFORMATION: This draft document provides guidance to an applicant in meeting the requirements of 10 CFR 61.12(j). This portion of the licensing requirements for the land disposal of low-level radioactive waste requires that a license application for a low-level waste (LLW) facility include a description of the quality control (QC) program for determining the natural disposal site characteristics. The regulation also requires a QC program during design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits, and managerial controls must be included. The requirements stated in 10 CFR 61.12(j) provided the bases for developing a quality assurance (QA) program.

The criteria presented in this document are similar to the criteria developed for Appendix B of 10 CFR Part 50. Although the criteria contained in Appendix B of 10 CFR Part 50 are not a regulatory requirement for a LLW disposal facility, the staff consider these criteria to encompass the fundamental elements of a QA program and has chosen to apply similar criteria to LLW disposal.

This document proposes QA guidance for any activity, structure, system, or component that is required to meet the performance objectives of 10 CFR Part 61, and to limit exposure to or releases of radioactivity. This document specifically identifies draft QA guidance for the design, construction, and operation of those structures, systems, and components as well as for site characterization activities.

Dated at Silver Spring, Maryland, this 8th day of December, 1987.

For the Nuclear Regulatory Commission.

Michael S. Kearney,

Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87–28645 Filed 12–11–87; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-149-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Model 737-300 series airplanes, which would require modification of the escape slide, packing method, and installation on the forward doors. This proposal is prompted by reports that, during door opening, the escape slide girt material can interfere with the girt bar stowage bracket, and hook in the girt fold, arresting the door opening motion. This condition, if not corrected, could cause delay during an emergency evacuation.

DATES: Comments must be received no later than February 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-149-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Information concerning the Air Cruisers service bulletin may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-149-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During recent escape slide certification testing on Model 737-300 series airplanes, it was discovered that, during door opening, the forward door escape slide girt material can interfere with the girt bar stowage bracket. Further testing revealed that, when the door is opened, the amount of girt material outside of the slide compartment can increase. This excess material can cause interference with the girt bar stowage bracket and stop the door opening motion. This interference must be manually corrected to allow the door to be opened normally. In addition, the excess girt material can permit misinstallation of the girt bar, causing deployment/inflation malfunction. This situation could cause a delay during an emergency evacuation.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification, in a manner approved by the FAA, of the escape slide and packing method on the forward doors of Model 737-300 airplanes.

The Air Cruisers Company, the escape slide manufacturer, has released Service Bulletin 103-25-11, Revision 1, dated October 14, 1987, which contains instruction information concerning some, but not all, of the proposed required modifications of the escape slide. Operators may wish to consult this document to obtain information for designing individual modification procedures. In addition, the Boeing Commercial Airplane Company has notified FAA that it is preparing a service bulletin for issuance in the near future, which will contain instructions for the accomplishment of the proposed modifications. The FAA may consider referencing this service bulletin in the final rule as an approved method of compliance.

It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $280,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737-300 series airplanes, certificated in any category. Compliance required within 6 months after the effective date of this amendment, unless previously accomplished.

To prevent failure or interference of opening of the forward doors during an emergency evacuation, accomplish the following:

A. Modify escape slide packing and means of girt material retention in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Modification of the escape slide and/or airplane must include a means to:

1. Prevent interference between the escape slide girt and the girt bar stowage bracket,

2. Prevent excess girt material from being outside the compartment, and

3. Prevent misinstallation of the girt bar.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on December 3, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28591 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-156-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that would require installation of brake metering valve tire burst guards in the main landing gear wheel wells. This proposal is prompted by reports of two airplanes in production found without the left and right main landing gear brake metering valve tire burst guards installed. This condition, if not corrected, could lead to loss of hydraulic systems A and B, brakes, and nose wheel steering.

DATE: Comments must be received no later than February 12, 1988.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-156-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle. Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-156-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two Boeing Model 737 series airplanes in production were found without left and right main landing gear brake metering valve tire burst guards installed. Subsequent investigation by the manufacturer indicates that fifteen airplanes were delivered without these guards installed. Operation without the tire burst guards installed could result in loss of hydraulic systems A and B, brakes, and nose wheel steering if a tire burst occurs in the main landing gear wheel well.

The FAA has reviewed and approved Boeing Service Bulletin 737-32-1202, dated August 27, 1987, which describes installation of the left and right main landing gear brake metering valve tire burst guards.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require installation of tire burst guards in accordance with the service bulletin previously mentioned.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Service Bulletin 737-32-1202, dated August 27, 1987, certificated in any category. Compliance required within the next six months after the effective date of this AD, unless previously accomplished.

To prevent damage to the hydraulic systems and loss of brakes and nose wheel steering in the event of a tire burst in the wheel well, accomplish the following:

A. Install left and right main landing gear brake metering valve tire burst guards in accordance with Boeing Service Bulletin 737-32-1202, dated August 27, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Cetification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-28593 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-157-AD]

Airworthiness Directives, British Aerospace Model BAe-125 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain British Aerospace Model BAe-125 series airplanes, that would require inspection for cracks and repair, if necessary, of the aileron mass balance assembly. This proposal is prompted by reports of cracking of the attachment lugs of the aileron mass balance side plate. This condition, if not corrected, could result in displacement of the side plate, and possible control surface interference.

DATE: Comments must be received no later than February 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-157-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-157-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition existing on certain British Aerospace (BAe) Model 125 series airplanes. Cases have been reported of cracking of the attachment lugs of the aileron mass balance side plate. This condition, if not corrected, could lead to displacement of the side plate and possible control surface interference.

BAe has issued Service Bulletin 57-66, Revision 2, dated October 25, 1986, which describes dye penetrant inspections, and repair if necessary, of the attachment lugs. The CAA has classified the BAe service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections, and repair if necessary, of the attachment lugs of the aileron mass balance side plate, in accordance with the previously mentioned BAe service bulletin.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-125 series airplanes listed in BAe-125 Service Bulletin 57-66, Revision 2, dated October 25, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent displacement of the aileron mass balance side plate, and possible control surface interference, accomplish the following:

A. Within 6 months after the effective date of this AD, accomplish a dye penetrant inspection for cracks in accordance with BAe Service Bulletin 57-66, Revision 2, dated October 25, 1986. Repeat the inspection at intervals not to exceed 2 years.

B. If cracks are detected, repair before further flight, in accordance with Repair Scheme 25WG/R143, issued with Service Bulletin 57-66, Revision 2, dated October 25, 1986.

C. Accomplishment of Repair Scheme 25WG/R143 constitutes terminating action for inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and has the concurrence of a FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 4, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28592 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-48]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan—Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-479 located in the vicinity of Dupont, DE. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace in the FAA's Eastern Region bounded by the New England, Great Lakes and the Southern Regions. This proposal is a portion of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before December 30, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-48, Federal Aviation Administration, JFK International Airport. The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484 Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of V-479 located in the vicinity of Dupont, DE. Currently, there is substantial congestion in east coast traffic flows to the point that substantial delays are experienced daily. This action would alter V-479 to bypass the Philadelphia terminal area in order to facilitate traffic flow in the en route airspace south of the New York metropolitan area. The EECP is intended to provide optimum use of airspace along the heavily traveled coastal corridors between New York and

Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; Miami, FL; and New York areas. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the need for concurrent implementation of this rule with related airway actions on the east coast, I find that good cause exists for providing a comment period of less than 30 days in order to promote the safe and efficient handling of air traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-479 [Revised]

From Dupont, DE; INT Dupont 070 °T (080 °M) and Yardley, PA, 190 °T (200 °M) radials; to Yardley.

Issued in Washington, DC, on December 1, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-28590 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 86-17, Notice 3]

Design Standards for Highways; Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental information; additional comment period.

SUMMARY: The FHWA has adopted for application on Federal-aid highway projects the American Association of State Highway and Transportation Officials' (AASHTO) "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1985," except for the requirements of section 7 of the document which deal with breakaway supports. Action on section 7 was deferred until FHWA's crash testing of previously accepted luminaire support hardware according to the new requirements in section 7 had been completed and the results available. These test results are available now and are being published for public review and comment. A 90-day comment period is being established. Comments received will be taken into consideration when a final decision is made as to whether section 7 of the 1985 AASHTO specification should be adopted for application on Federal-aid highway projects.

DATE: Written comments must be received on or before March 14, 1988.

ADDRESS: Submit written, signed comments, preferably in triplicate, to FHWA Docket No. 86-17, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Office of Engineering, (202) 366-1329, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA issued a final rule, published September 28, 1987, at 52 FR 36245, which adopted for application on Federal-aid highway projects the AASHTO "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1985," except for the requirements of section 7 of the document which deal with breakaway supports. The FHWA deferred taking action to adopt section 7 of the 1985 AASHTO specifications until additional information was provided for public review and comment on the capability of presently accepted luminaire hardware to meet the breakaway requirements of the 1985 AASHTO specifications.

The testing by FHWA of previously accepted luminaire support hardware, which the preambles to the previously cited final rule and a notice of proposed rulemaking (NPRM), FHWA Docket 86-17 (51 FR 40817, November 10, 1986), indicated would be used to assist in determining whether currently accepted hardware meets the breakaway requirements of the 1985 AASHTO specification, has now been completed.

In accordance with the 1985 AASHTO specifications, various luminaire support systems were crash tested with an 1,800-pound test device at impact speeds of 20 mph and 60 mph. Most suppliers of breakaway luminaire support systems provided hardware to the FHWA for this capability testing program. An overall summary of the test results is given in Table 1. Included in Table 1 are the test number, the speed of impact, the reported change in velocity, the stub height, the total weight of the luminaire support system, the mounting height, and the luminaire offset for each of the supports tested. These data are grouped according to the seven basic types of bases tested. Reports covering individual crash tests are available for public examination at the docket address given in the previous section entitled "Address."

It is noted that for several support systems only a 20 mph test is reported. For these devices, the 20 mph test produced a high value for the change in velocity (greater than about 25 ft/sec) and resulted in high force levels being imposed on the reusable bogie. In these cases, to avoid potential damage to the bogie, the 60 mph test was not run. Also, for all tests the stub height values

reported are a measurement to the highest point of the stub remaining after the crash test. A decision on whether this stub height satisfies the 1985 AASHTO specification criteria of no "substantial remains" projecting more than 4 inches above ground will require separate evaluation of the crash test films and data.

TABLE 1.—SUMMARY OF CAPABILITY TEST RESULTS

Test No.	Speed (mi/h)	Change in [1] velocity (ft/sec)	Stub height (inches)	Total weight (lb)	Mounting height (ft+in)	Luminaire offset (ft+in)
Fiberglass Support/Aluminum Anchor Base [2]						
87F001	20	29.3	15.0	266	40'4"	8'6"
87F002	20	10.3	9.0	149	24'2"	6'6"
87F003	60	4.7	9.0	149	24'2"	6'6"
87F068	20	10.2	8.0	208	35'0"	8'0"
87F070	60	4.1	8.0	208	35'0"	8'0"
87F069	20	10.4	8.0	237	35'0"	8'0"
87F071	60	5.8	8.0	237	35'0"	8'0"
Aluminum Support/Aluminum Anchor Base [2]						
87F022	20	35.4	NA	530	50'6"	15'5"
87F023	20	35.5	NA	530	50'6"	15'5"
86F072	20	36.1	12.5	285	40'4"	15'4"
86F073	20	34.6	NA	285	40'4"	15'4"
86F074	20	31.9	NA	188	24'10"	15'3"
86F076	20	23.2	4.5	213	35'0"	6'1"
86F078	60	11.2	4.5	213	35'0"	6'1"
Couplings [2]						
87F054	20	17.5	5.0	995	55'0"	16'0"
87F055	60	13.8	5.0	995	55'0"	16'0"
87F073	20	11.2	2.5	523	53'4"	15'5"
87F074	60	8.8	2.5	523	53'4"	15'5"
87F075	20	16.7	2.5	523	45'5"	9'6"
87F076	60	11.7	2.5	523	45'5"	9'6"
Progressive Shear [2]						
86F066	20	34.2	NA	745	51'1"	6'5"
86F067	20	9.7	1.8	390	51'4"	6'5"
86F068	60	10.2	1.8	390	51'4"	6'5"
86F069	20	6.1	2.8	300	39'8"	6'10"
86F070	60	8.8	2.8	300	39'8"	6'10"
86F071	20	30.3	1.8	467	40'0"	7'0"
Slip Base [2]						
87F033	20	15.0	3.5	946	55'6"	16'0"
87F034	60	12.7	3.5	964	55'6"	16'0"
Transformer Base [2]						
86F075	20	22.5	9.0	429	47'0"	15'0"
86F079	60	12.9	6.5	429	47'0"	15'0"
86F077	20	35.6	NA	586	55'4"	15'5"
86F080	20	33.3	NA	813	52'6"	16'6"
86F081	20	13.4	9.5	525	50'3"	15'0"
86F082	60	15.0	9.5	525	50'3"	15'0"
86F083	20	12.0	5.0	844	40'0"	15'5"
86F084	60	17.5	4.5	844	40'0"	15'5"
86F085	20	25.2	9.5	853	40'0"	15'5"
86F086	60	22.7	5.9	853	40'0"	15'5"
86F087	20	29.8	10.5	1048	55'0"	16'2"
86F088	20	30.1	17.0	809	52'6"	16'6"
86F089	20	23.0	7.5	319	28'2"	4'0"
86F090	60	12.6	7.0	319	28'2"	4'0"
86F091	20	35.0	NA	584	55'0"	15'4"
87F004	20	34.6	NA	528	50'6"	15'5"
87F012	20	35.7	NA	522	50'6"	15'5"
87F013	20	35.5	NA	518	50'6"	15'5"
87F014	20	34.2	NA	520	50'6"	15'5"
87F020	20	35.7	NA	520	50'6"	15'5"

TABLE 1.—SUMMARY OF CAPABILITY TEST RESULTS—Continued

Test No.	Speed (mi/h)	Change in [1] velocity (ft/sec)	Stub height (inches)	Total weight (lb)	Mounting height (ft+in)	Luminaire offset (ft+in)
87F021	20	34.2	NA	667	55'8"	15'5"
87F051	20	35.8	NA	398	39'9"	14'9"
87F052	20	18.3	3.0	558	49'10"	14'9"
87F053	20	35.6	NA	558	49'10"	14'9"
87F072	60	13.9	3.0	558	49'10	14'9"
Soil Mounted Fiberglass Support [3]						
6	20	[1] (14.4)	NA	193	29'6"	6'6"
2	60	10.3	0.0	193	29'6"	6'6"
3	20	[1,4] (13.6)	0.0	157	23'6"	6'6"
5	20	[1] (20.9)	NA	193	26'0"	8'6"
4	60	11.0	0.0	193	26'0"	8'6"

NA=Not Applicable (device did not break away).
Metric Equivalents: 1 mi/h=1.61 km/h, 1 ft/sec=0.305 m/s; 1 ft=0.305 m, 1 in=0.025 m, 1 lb=0.45 kg.
[1] In most cases, because the impact event is of short duration, the reported value represents both the vehicle change in velocity or the longitudinal occupant impact velocity, the measure of occupant risk cited in National Cooperative Highway Research Program Report 230. However, for crash tests where the vehicle/pole impact was of relatively long duration, the measured vehicle change in velocity was typically considerably higher than the measured longitudinal occupant impact velocity. In these latter instances, only the longitudinal occupant impact velocity is given and parentheses used to indicate the basis of the reported change in velocity.
[2] Crash testing of these devices was performed at FHWA's Federal Outdoor Impact Laboratory using a 1,850-pound boggie test vehicle.
[3] Tests conducted through an FHWA research contract. Poles were buried in a strong soil type. Test vehicles were 1979 VW Rabbits.
[4] Only 20 mi/h data available. The 60 mi/h test is planned for a later date. For purposes of the discussion in the text it is assumed this support will produce a change in velocity under 15 ft/sec in a 60 mph test.

The following observations are presented on the crash test data:

1. Overall, the data shows that only 10 of the 38 devices tested would satisfy the 1985 AASHTO specification change in velocity criteria of 15 ft/sec or less. However, this overall performance indicator is heavily influenced by the large number of transformer bases tested and their results.

2. Within the seven basic types of breakaway devices tested there was at least one device each in six of those categories which satisfied the 1985 ASSHTO change in velocity criterion (no aluminum support/aluminum anchor bases passed).

3. Some devices tested which produced change in velocity values slightly greater than the AASHTO criteria, such as those covered by tests 87FO54/55 and 86FO83/84, could possibly produce change in velocity values satisfying the ASSHTO criteria if the total weight of the luminaire support assembly being tested were reduced.

4. Only one slip base device was submitted to FHWA for testing. The support system as tested included a high mounting height (55'-6") and heavy total weight (964 lbs). It produced results which would satisfy the 1985 AASHTO specification breakaway requirements. Several States are using their own designs for slip bases. (This is particularly common in the West.) The results of FHWA's testing of the one slip base device would indicate that many of these other slip base systems might, when crash tested, produce results which comply with the 1985 AASHTO specification.

5. For transformer type bases both mounting bolt torque and mounting bolt circle appear to be important variables to the change in velocity criterion.

These data are being provided for use by commenters wishing to respond to the question of whether the FHWA should adopt section 7 of the 1985 AASHTO specification for use on Federal-aid highway projects. The FHWA is not at this time using the results from its crash testing program to determine the acceptability of a specific breakaway support system for use on a Federal-aid highway project. Should the FHWA, at a later date, decide to adopt the 1985 AASHTO specification, then the test results from FHWA's capability testing program could serve to support a determination of acceptability of use.

For those wishing to comment to modify or extend previous comments to the docket on FHWA's potential adoption of section 7 of the 1985 AASHTO specifications for use on Federal-aid highway projects, an additional 90-day comment period is being established so the results, summarized in this supplement, of FHWA's capability testing of breakaway luminaire supports may be considered in the preparation of comments.

The FHWA has determined that the rulemaking action which this document addresses contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The manufacturers of sign and luminaire support systems may be minimally affected should, at a future date, FHWA decide to adopt section 7 of the 1985 AASHTO specifications. A draft regulatory evaluation discussing these impacts was prepared and made available when the November 10, 1986, NPRM was published. This regulatory evaluation will be finalized when the FHWA makes a final decision regarding adoption of section 7 of the 1985 ASSHTO specifications.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highway and road, Incorporation by reference, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 7, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-28652 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-22-M

OFFICE OF INDEPENDENT COUNSEL

28 CFR Part 701

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Office of Independent Counsel.

ACTION: Proposed rule.

SUMMARY: The Office of Independent Counsel proposes to amend Title 28 of the Code of Federal Regulations, Chapter VII, by adding Part 701, Procedures for Disclosure of Records Under the Freedom of Information Act. This action is necessary to ensure the effective discharge of the Office's obligations under the Freedom of Information Act.

DATES: Submit any comments by January 13, 1988.

ADDRESSES: Address all comments to Pamela Krems, Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Pamela Krems, 202-383-8989.

SUPPLEMENTARY INFORMATION: The Office of Independent Counsel operates pursuant to two distinct and separate sources of authority. On December 4, 1986, Attorney General Edwin Meese III filed an application for appointment of an Independent Counsel with the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit. On December 19, 1986, the Special Division of the Court of Appeals filed an order appointing Lawrence E. Walsh as Independent Counsel in the Iran/Contra matter. Order Appointing Independent Counsel, *In re Oliver L. North, et al.*, Div. No. 86-6 (Dec. 19, 1986).

On March 5, 1987, Attorney General Meese issued a regulation that created an "Office of Independent Counsel: Iran/Contra" and provided that office with the same jurisdiction and powers that it already possessed under the Ethics in Government Act, 28 U.S.C. 591-598, and the December 19, 1986 court order appointing Independent Counsel Walsh. 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987) (to be codified at 28 CFR Parts 600 and 601). The "Office of Independent Counsel" and the "Office of Independent Counsel: Iran/Contra" are in actuality one and the same office. This proposed regulation is issued by Independent Counsel under both grants of authority.

This order relates primarily to individuals rather than to small business entities. However, as required by the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Office hereby states that this regulation will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 701

Freedom of Information.

Dated: December 7, 1987.

Lawrence E. Walsh,

Independent Counsel.

For the reasons set forth in the preamble, and pursuant to the authority vested in me by the Ethics in Government Act, 28 U.S.C. 591-598, the December 19, 1986 Court order, and the authority delegated to me by the Attorney General pursuant to the Attorney General's regulation issued on March 5, 1987, 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987), and 5 U.S.C. 552, Title 28 of the Code of Federal Regulations, Chapter VII, is proposed to be amended by adding Part 701, to read as follows:

PART 701—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

Authority: 5 U.S.C. 552.

§ 701.10 General provisions.

(a) This part contains the regulations of the Office of Independent Counsel implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with regulations issued pursuant to the Privacy Act. To the extent permitted by other laws, the Office will also consider making available records that it is permitted to withhold under the FOIA if it determines that such disclosure would be in the public interest and would not interfere with the functioning of the Office.

(b) As used in this part, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of his request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(4) "Requester" means any person who makes a request to the Office.

(5) "Business information" means trade secrets or other commercial or financial information.

(6) "Business submitter" means any commercial entity that provides business information to the Office and that has a proprietary interest in the information.

(c) The FOIA/PA Officer of the Office of Independent Counsel shall be responsible to Independent Counsel for all matters pertaining to the administration of this part.

(d) The Office of Independent Counsel shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). The Office shall notify a requester whenever it is unable to respond to or process the request or appeal within the time limits established by the FOIA. The Office shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 701.11 Requirements pertaining to requests.

(a) *How made and addressed.* A requester may make a request under this part for a record of the Office of Independent Counsel by writing to the Office at: FOIA/PA Officer, Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004. A request should be sent to the Office at its proper address and both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) *Request must reasonably describe the records sought.* A request must describe the records sought in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Office operations. Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the

record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If the Office determines that a request does not reasonably describe the records sought, the Office shall either advise the requester what additional information is needed or otherwise state why the request is insufficient. The Office also shall extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner that will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this part shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 701.18 of this part, up to $25, unless a waiver of fees is sought. The Office shall confirm this agreement in its letter of acknowledgement to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

§ 701.12 Responses by the Office to requests.

(a) *Authority to grant or deny requests.* The head of the Office, or his designee, is authorized to grant or deny any request for a record of the Office.

(b) *Initial action by the Office.* When the Office receives a request for a record in its possession, the Office shall promptly determine whether another agency of the Government is better able to determine whether the record is exempt, to any extent, from mandatory disclosure under the FOIA; and whether the record, if exempt to any extent from mandatory disclosure under the FOIA, should nonetheless be released to the requester as a matter of discretion. If the Office determines that it is the agency best able to determine whether to disclose the record in response to the request, then the Office shall respond to the request. If the Office determines that it is not the agency best able to determine whether to disclose the record in response to the request, the Office shall either:

(1) Respond to the request, after consulting with the other agency best able to determine whether to disclose the record and with any other agency having a substantial interest in the requested record or the information contained therein; or

(2) Refer the responsibility for responding to the request to another agency that generated or originated the record, but only if that other agency is subject to the provisions of the FOIA. Under ordinary circumstances, the agency that generated or originated a requested record shall be presumed to be the agency best able to determine whether to disclose the record in response to the request.

(c) *Law-enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of criminal law or to a criminal law-enforcement proceeding and that was generated or originated by another agency, the Office shall refer the responsibility for responding to the request to that other agency; however, such referral shall extend only to the information generated or originated by that other agency.

(d) *Classified information.* Whenever a request is made for a record containing information that has been classified, or that may be eligible for classification, by another agency under the provisions of Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall refer the responsibility for responding to the request to the agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by the Office because it contains information classified by another agency, the Office shall refer the responsibility for responding to the request to the agency that classified the underlying information; however, such referral shall extend only to the information classified by the other agency.

(e) *Notice of referral.* Whenever the Office refers all or any part of the responsibility for responding to a request to another agency, the Office will consult with the other agency to obtain specific approval to notify the requester of the referral and inform the requester of the name and address of the agency to which the request has been referred and the portions of the request so referred.

(f) *Agreements regarding consultations and referrals.* No provision of this section shall preclude formal or informal agreements between the Office and another agency to eliminate the need for consultations or referrals of requests or classes of requests.

(g) *Separate referrals of portions of a request.* Portions of a request may be referred separately to one or more other agencies whenever necessary to process the request in accordance with the provisions of this section.

(h) *Date for determining responsive records.* In determining records responsive to a request, the Office ordinarily will include only those records within the Office's possession and control as of the date of its receipt of the request.

§ 701.13 Form and content of Office responses.

(a) *Form of notice granting a request.* After the Office has made a determination to grant a request in whole or in part, the Office shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the Office. The Office shall inform the requester in the notice of any fees to be charged in accordance with the provisions of Section 701.18 of this part.

(b) *Form of notice denying a request.* The Office, when denying a request in whole or in part, shall so notify the requester in writing. The notice must be signed by the FOIA/PA Officer, or her designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions that the Office has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 701.16(a) and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Office shall so notify the requester in writing.

§ 701.14 Classified information.

In processing a request for information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall review the information to determine whether it warrants classification. Information that does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552(b)(1). The Office shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure

compliance with Executive Order 12356 or any other Executive Order concerning the classification of records.

§ 701.15 Business information.

(a) *In general.* Business information provided to the Office by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Notice to business submitters.* The Office shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(c) *When notice is required.* For business information submitted to the Office it shall provide a business submitter with notice of a request whenever the business submitter has in good faith designated the information as commercially or financially sensitive, or the Office has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter. Notice of a request for business information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the Office shall afford a business submitter a reasonable period within which to provide the Office with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* (1) The Office shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Office decides to disclose business information over the objection of a business submitter, the Office shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Office shall promptly notify the business submitter.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The Office determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The Office is a criminal law-enforcement agency that acquired information in the course of a lawful investigation of a possible violation of criminal law.

§ 701.16 Appeals.

(a) *Appeals to Independent Counsel.* When a request for access to records or for a waiver of fees has been denied in whole or in part, or when the Office fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to Independent Counsel within 30 days of his receipt of a notice denying his request. An appeal to Independent Counsel shall be made in writing and addressed to the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal."

(b) *Action on appeals by the Office of Independent Counsel.* Unless Independent Counsel otherwise directs, his designee shall act on behalf of the Independent Counsel on all appeals under this section, except that a denial of a request by Independent Counsel shall constitute the final action of the Office on that request.

(c) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 701.17 Preservation of records.

The Office shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 701.18 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Office in responding to and processing requests for records under this part. All fees so assessed shall be charged to the requester, except when the charging of fees is limited under paragraph (c) of this section or when a waiver or reduction of fees is granted under paragraph (d) of this section. The Office shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this part, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial

scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7) and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The Office may assess fees for time spent searching even if it fails to locate any respective record or when records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. When the search and retrieval cannot be performed entirely by clerical personnel—for example, when the identification of records within the scope of the request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. When the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). The Office is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For other methods of duplication, the Office shall charge the actual direct costs of duplicating a record.

(3) *Review.* Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that when the time of professional personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel. Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when the Office analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly when that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Office shall provide without charge

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under the FOIA shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section when the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government—the Office shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern the identifiable operations of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone would not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding or government operations or activities.* The disclosable portions or requested records must be meaningfully informative on specific governmental operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of identified persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to convey effectively information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other

analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Office shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests that would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only when, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Office shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market governmental information for direct economic return shall not be presumed to serve primarily the "public interest."

(4) When only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* When the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases when a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* When the Office reasonably believes that a request or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly. The Office may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. When requests are separated by a longer period, the Office shall aggregate them only when there exists a solid basis for determining that such aggregation is warranted, *e.g.*, when the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) when the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payments of an amount up to the entire estimated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) When a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Office shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) When a component acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Office has received payment of the assessed fee.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day. following the day on which the bill was sent to the requester. Once a fee payment has been received by the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing. The Office shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97-265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government printing entity such as the Government Printing Office or the National Technical Information Service to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) When records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Office shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Office shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Office shall not engage in a line-by-line search when merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Components shall determine, as well as reasonably possible, the use to which a requester will put the records requested. When the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the office otherwise has reasonable cause to doubt a requester's stated use, the Office shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, and institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Office shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, when the Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

§ 701.19 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.

[FR Doc. 87-28442 Filed 12-11-87; 8:45 am]
BILLING CODE 2210-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments of Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Arkansas permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA).

The amendments concern the authority of the Arkansas Department of Pollution Control and Ecology (ADPCE) to require an applicant to collect additional data and/or take mitigative or protective measures to minimize adverse impacts on historic resources.

This notice sets forth the times and locations that the Arkansas program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Arkansas' proposed modification of its program not received on or before 4:00 p.m. c.s.t. on January 13, 1988 will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on January 8, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. James H. Moncrief at the Tulsa Field Office by the close of business on or before December 29, 1987. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under **"ADDRESSES"**.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Copies of the Arkansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and ADPCE during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC. 20240, Telephone: (202) 343–5492

Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72209, Telephone: (501) 562–7444.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior approved the Arkansas Permanent Regulatory Program. Information regarding general background on the Arkansas program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of the approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003).

Subsequent actions taken with regard to Arkansas' program approval and approved program amendments can be found in 30 CFR 904.10 and 904.15.

II. Submission of Amendments

On February 10, 1987, OSMRE promulgated revised regulations regarding the consideration that must be accorded historic properties during the permitting of surface coal mining operations (52 FR 4144). In accordance with 30 CFR 732.17(d), which requires that OSMRE notify State regulatory authorities of all changes in Federal regulations that will necessitate State program changes, OSMRE sent a letter to Arkansas June 9, 1987 (Administrative Record No. AR–326), outlining specific areas where the State program needed to be amended or clarified to be no less effective than the revised Federal regulations.

In response, Arkansas submitted amendments to the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) by letter dated November 2, 1987 (Administrative Record No. AR–329). The amendments include:

(1) Additions to ASCMRC § 776.12(a)(3)(i) to allow the Director, ADPCE, to require additional information regarding known or unknown historic or archeological resources in applications for coal exploration operations of more than 250 tons.

(2) An addition to ASCMRC § 786.19 requiring the Director, ADPCE, to make a written finding prior to approving any permit application or revision of a permit. This finding must state that the Director has taken into account the effect of the proposed permitting action on properties listed on, or eligible for listing on, the National Register of Historical Places (NRHP). The amendment also states that this finding may be supported in part by inclusion of appropriate permit conditions or operation plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

(3) Additions to ASCMRC § 779.12(b), which cover permit application requirements for information on Environmental Resources. The addition specifies that the Director, ADPCE, may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the NRHP.

(4) Additions to ASCMRC § 780.31 regarding permit application requirements for reclamation and operation plans involving publicly owned parks and all places listed on the NRHP. The additions clarify the State's authority to require the applicant to take measures to protect such properties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Arkansas satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate they will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. c.s.t. December 29, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow

OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES"**. A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 904

Coal Mining, Intergovernmental Relations, Surface Mining, Underground Mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: December 4, 1987.

[FR Doc. 87-28597 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Docket Number: CGD5 87-088]

Safety Zone; Chesapeake Bay, Hampton Roads, Elizabeth River, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish permanent safety zone regulations for liquified petroleum gas (LPG) carriers movements within the port of Hampton Roads. The proposal would establish moving safety zones around the LPG vessels, whose cargo tanks are not gas free, during inbound and outbound transits of the Chesapeake Bay and Elizabeth River between Thimble Shoals Channel Lighted Buoy #3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River. The safety zones are intended to minimize the risk of collision between LPG carriers and other vessels.

DATE: Comments must be received on or before January 28, 1988.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Hampton Roads Marine Safety Office, 200 Granby Mall, Norfolk, Virginia 23510-1888.

The comments and other material referred to in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to that address.

FOR FURTHER INFORMATION CONTACT: LTJG T. McK. Sparks, Port Safety Officer, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, Norfolk, Virginia 23510-1888, (804) 441-3290.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking process by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (87-088) and the specific section of the proposal to which their comments apply and give reasons for each comment. Receipt of comments will be acknowledged if a self-addressed post card or envelope is provided. These regulations may be changed in light of comments received. All comments received prior to the expiration date will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The drafters of this notice are LTJG T. McK. Sparks and CDR R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

This proposal establishes moving safety zones around the LPG carriers during their inbound and outbound transits. The safety zones extend 250 feet from an LPG carrier's port and starboard sides and 300 yards from its bow and stern.

Entry into this zone would be prohibited unless authorized by the Captain of the Port. Vessels that are moored at marinas, wharves, and piers or at anchor will be permitted to remain at their moorage or anchorage while an LPG vessel passes their location.

Coast Guard patrol vessels will escort the LPG carriers, while in transit, to enforce the safety zones. They will monitor channels 13 and 16 VHF-FM and advise marine traffic along the vessel's course of the safety zone. They will also advise vessels when it is safe to overtake or pass the LPG carriers.

The proposed regulations require persons to comply with the general safety zone regulations in 33 CFR 165.23, which prohibit persons from entering the safety zone without authorization of the Captain of the Port. Mariners would be provided with advanced notice of scheduled LPG vessels transits of the Chesapeake Bay between Thimble Shoals Channel Lighted Buoy #3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River by Broadcast Notice of Mariners.

This proposal is part of the overall safety program implemented by the captain of the Port, Hampton Roads to enhance the safety of liquified petroleum gas operations in the Port of Hampton Roads. The Captain of the Port, Hampton Roads has been periodically issuing emergency safety zone regulations to ensure the safe movements of LPG carriers in Hampton Roads. These regulations have normally been issued not more than a day or two before the LPG carriers scheduled arrival in port. The regulations have required frequent amendment due to the large number of factors that can delay the scheduled movements of these vessels. These regulations have established safety zones during the inbound and outbound transits of the LPG carriers.

The establishment of permanent safety zone regulations for LPG carrier transits will put the maritime community on notice of the local requirements that apply whenever an LPG vessel transits the port area.

Economic Assessment and Certification

These proposed regulations have been considered to be non-major under Executive Order 12291 on federal regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These specific requirements have been in effect for years, so the implementation into permanent regulations would cause little or no disruption to the maritime community. Since the impact of this proposal is expected to be minimal, it

will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, and 160.5.

2. Section 165.506 is added to read as follows:

§ 165.506 Chesapeake Bay, Hampton Roads, Elizabeth River Southern Branch Liquified Petroleum Gas Carrier Safety Zone.

(a) The waters within 250 feet from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquified petroleum gas in bulk as cargo are a safety zone while the vessel transits the Chesapeake Bay and Elizabeth River between Thimble Shoals Lighted Buoy #3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River.

(b) Except as provided in paragraph (c) of this section, the general safety zone regulations in § 165.23 apply to this safety zone. Permission to enter the safety zone may be obtained from the Captain of the Port or a designated representative, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(c) A vessel that is moored at a marina, wharf, or pier or is at anchor may remain in the safety zone while a vessel carrying liquified petroleum gas passes it locations if the vessel remains at its moorage or anchorage during the period when its location is within the safety zone.

(d) A vessel that has had liquified petroleum gas in a tank is carrying the liquified petroleum gas in bulk as cargo for the purpose of paragraph (a) of this section, unless the tank has been gas freed since the liquified petroleum gas was last carried as cargo.

(e) The Captain of the Port, Hampton Roads will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the scheduled arrival and departure of a liquified petroleum gas carrier.

Dated: December 3, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 87–28631 Filed 12–11–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC–348–P]

Medicaid Program; Eligibility Determinations Based on Disability

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would make explicit in the Medicaid regulations HCFA's policy concerning the relationship between State Medicaid eligibility determinations based on disability and disability determinations made by the Social Security Administration under the Supplemental Security Income (SSI) program. The regulations would clarify the controlling natue of SSA determinations of disability, specify when the State Medicaid agency must make independent disability determinations, clarify the terminology used to describe the composition of the review team and the information considered under Medicaid in making disability determinations, and extend the Medicaid time limit for making eligibility determinations based on disability from 60 days to 90 days to ensure maximum uniformity in the disability determination process used by SSA and the Medicaid agency.

The revisions are intended to clarify existing HCFA policy and assist in the effective and efficient administration of the Medicaid program

COMMENT DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on February 12, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, ATTENTION: BERC–348–P, P.O. Box 26676, Baltimore, Maryland 22107.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting please refer to file code BERC–348–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Joyce Stokes, 301–597–3870.

SUPPLEMENTARY INFORMATION:

Background

1. General Background

Under the provisions of sections 1902(a)(10) and 1905(a) of the Social Security Act (the Act), individuals who meet certain income and resource requirements and other general eligibility requirements and who are disabled as defined under the Act are eligible for Medicaid. These individuals include those who are receiving cash assistance payments under the Supplemental Security Income (SSI) program, those who are eligible to receive such payments but are not receiving them, and those who, at a minimum, meet the SSI definition of disability but are not eligible for a cash assistance payment because they have income and resources that exceed allowable levels. The law requires that the SSI definition of disability set forth in section 1614 of the Act must be satisfied, at a minimum, in order for an individual to be eligible for Medicaid based upon disability. The SSI definition governs eligibility except in those States that elect to use more restrictive eligibility requirements than those used under SSI (although no more restrictive than under the State's 1972 approved Medicaid plan), as provided for under section 1902(f) of the Act. The Medicaid regulations implementing the requirement that the SSI disability definition generally must be used are located in 42 CFR 435.540. In implementing this requirement, HCFA requires that the related SSI criteria, standards, presumptions, and factors required to reach SSI decisions on disability also apply to Medicaid

eligibility determinations based on disability.

Most State Medicaid agencies have agreements with the Social Security Administration (SSA) under the authority of section 1634 of the Act to determine Medicaid eligibility for individuals who are recipients of SSI and federally administered State supplements. The Federal regulations that govern those agreements are located in 42 CFR 435.909 and 20 CFR 416.2101 through 416.2119.

In cases in which a State has a section 1634 agreement with SSA and the individual files an application only with SSA, the State Medicaid agency is not required to make a Medicaid disability determination. An applicant is required to wait until SSA makes an SSI eligibility determination. An SSA determination to provide SSI benefits usually confers Medicaid eligibility automatically. (An SSA determination includes determinations made by State agencies on behalf of the Secretary.) As discussed in detail in section 2 of this preamble, the basic rule is that any SSA determination as to disability remains controlling as to the same set of facts unless it is changed by SSA. However, if an individual files an application with the State agency alleging that he or she is eligible for Medicaid on the basis of disability, the State agency responsible for Medicaid determinations must make a determination in certain circumstances.

The circumstances under which the State Medicaid agency is required to make an independent determination of disability are as follows:

1. An individual applies for Medicaid as a non-cash recipient and has not applied to SSA for SSI cash benefits.

2. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State Medicaid agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's application for Medicaid. (Section 1902(a)(8) of the Act provides that Medicaid must be furnished to eligible individuals with reasonable promptness. Regulations implementing this requirement, § 435.911, currently specify that the State Medicaid agency must make an eligibility determination based on disability within 60 days from the date a written application is submitted to the agency. As discussed in section 3 of this preamble, we are proposing to expand this time limit to 90 days.)

3. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria for determining disability than SSI or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

4. The individual applies for Medicaid as a noncash recipient and alleges a disabling condition that is different from or in addition to that considered by SSA.

5. The individual applies for Medicaid as a noncash recipient and alleges that his or her condition has changed or deteriorated since SSA made a determination of ineligibility for SSI, alleges a period of disability beginning at least 12 months after the date of the most recent final SSA determination, and has not applied for SSI on the basis of these allegations. (Any allegation of a deterioration of the condition for which SSA made a determination that is filed less than 12 months after the most recent final SSI determination must be submitted to SSA for reconsideration or reopening.)

2. Effects of SSA Disability Determinations

The statute is clear that the SSI disability definition under section 1614 of the Act must be used in determining disability under Medicaid, except in those States that elect to apply a more restrictive definition, as noted above. It is clear also that, in States that have section 1634 agreements, if SSA awards SSI benefits to an individual on the basis of disability, the State also must provide Medicaid (if the individual agrees to assign any rights to third party payment and agrees to provide third party information) and is bound by the SSA determination of disability.

Under section 1902(a)(10) of the Act, States have the option of providing Medicaid coverage to persons who meet the categorical requirements of specified cash assistance programs, including persons who meet the definition of disability used under the SSI program, but who either are not receiving cash payments or are ineligible for cash payments solely as a result of excess income or resources. If a cash assistance program (in this case, SSI) determines or previously has determined that an individual does not meet the categorical requirements for eligibility (in this case, disability), by definition the individual is not eligible under the program's categorical requirements and thus should not be eligible under one of these State options. Therefore, determinations of disability made under the SSI and the title II (OASDI) programs control for purposes of *any* applications for Medicaid based upon an allegation of disability for essentially the same condition and time periods.

Our basic rule is that any SSA determination as to disability remains controlling once it is made until it is changed by SSA. In the event a different conclusion was reached by the State Medicaid agency prior to the individual's application for SSI, or because the SSA determination was not made promptly as required under 42 CFR 435.911, the State Medicaid agency's determination is superseded by the SSA determination.

SSA is the agency with primary responsibility for interpreting the statutory language of section 1614 of the Act that defines disability. It is SSA that determines whether an individual is disabled for purposes of SSI eligibility. States may provide Medicaid based on disability only to individuals who, at a minimum, meet the SSI program's disability standard. Thus, if the SSI program has determined that an individual is not disabled for purposes of SSI eligibility, this precludes Medicaid eligibility based upon a claim of disability. It is only in those cases in which SSA has not spoken (e.g., individuals have not applied for SSI or individuals are not financially eligible for SSI) that States must apply the SSI eligibility criteria and determine whether an applicant *would be eligible* for SSI if he or she applied or were financially eligible. In other words, when the SSI program has determined that an individual is not disabled, that determination settles the question of whether the individual "would be eligible for SSI." The option of providing Medicaid to individuals who would be eligible for SSI but have not applied for cash payments, or are financially ineligible for cash payments, was not intended to grant individuals a second chance at Medicaid eligibility after they have been found not disabled by the SSI program.

An SSA determination has a binding prospective effect. If SSA makes a determination of disability that is different from one already made by a State Medicaid agency, FFP in Medicaid expenditures for these individuals is limited in accordance with §§ 435.1001–1003. In cases in which SSA denies disability after the State agency has made a determination of eligibility, FFP is available only for the period of eligibility in which the State made a reasonable application of SSI policies, definitions, standards, and criteria until SSA reached the different

determination. At that point, FFP is available only as provided in § 435.1003. In other words, States that have made a good faith effort to apply the SSA rules on disability in cases in which SSA has not made a determination on issues before the State within the Medicaid time limit will not be penalized because they made a determination that ultimately proves to be contrary to the SSA determination. For purposes of FFP and quality control guidelines, the date an SSA disability determination becomes binding on a State Medicaid agency is the date the State receives the official SSA notification of the determination. The binding prospective effect of an SSI determination is subject to the administrative period permitted by 42 CFR 435.1003. States that do not take necessary action, including notice to the applicant, concerning such a determination within the period allowed under § 435.1003 will lose FFP for services provided beyond that period and will be subject to quality control errors.

We have received numerous questions on the effects of SSI eligibility determinations based on disability on Medicaid eligibility disability determinations. The existing Medicaid regulations do not explicitly address the situation in which SSA has found an individual not disabled and that individual also applies to a State for Medicaid based on disability. Therefore, we believe it is appropriate to revise the Medicaid regulations to incorporate HCFA's policy on the controlling nature of SSA disability determinations, and the effect of new and material evidence on a prior SSA determination and other related matters.

We believe that explicitly incorporating HCFA's policy in the Medicaid regulations also will help to prevent disruptive court challenges to its validity. Medicaid eligibility under the State options of providing Medicaid to individuals who would be eligible for SSI but have not applied for, or are not financially eligible for, SSI generally involves individuals who would not have received a disability determination from SSA. For this reason, the existing Medicaid regulations do not expressly address the situation in which SSA has determined that an applicant for SSI is not disabled, and that individual subsequently applies to the State for Medicaid based on disability. This has not only caused confusion, but, we believe, gave rise to the decision by certain Medicaid applicants in the State of Rhode Island to bring a Federal court challenge to HCFA's policy that SSI disability determinations control for purposes of State Medicaid applications based upon disability (*Rousseau v. Bordeleau v. Heckler*, 624 F. Supp. 355 (D.R.I. 1985)). The plaintiffs in *Rousseau* alleged that even if SSI has found an individual not disabled, and thus by definition not eligible under the SSI categorical standard, States should still make an "independent" determination as to whether the individual "would be" eligible for SSI if he or she applies for Medicaid based upon disability.

In ruling for the plaintiffs, in a decision we believe to be erroneous, the District Court in *Rousseau* held that the existing regulations governing Medicaid applications to States based upon disability "supports the view" that States should in such cases make independent disability determinations (624 F. Supp. at 360). By clearly spelling out HCFA's policy in the Medicaid regulations, we believe that such rulings can be avoided in the future. If these proposed regulations become final, we intend to seek to have the decision in *Rousseau* vacated. Unless and until the Court's ruling is vacated or overruled, however, the policy set out in these proposed regulations will not have applicability in the State of Rhode Island, which is subject to a court order that it engage in independent disability determinations even if SSI has found an applicant not disabled.

Since SSA determinations are controlling, HCFA has determined that new and material evidence or allegations by individuals regarding previous SSA determinations of disability must be presented to SSA for reconsideration or reopening of the determination in accordance with SSA's rules. SSA is in the best position to reconsider or reopen its prior determinations. SSA has an ongoing process for making disability determinations and has a high level of expertise in this area. It is not in the interest of program efficiency or in the best interests of recipients for States to perform duplicate tasks which might arrive at different or conflicting determinations of eligibility. To do so would be wasteful of Federal tax dollars and would subject recipients unnecessarily to application of two separate processes.

Under SSA's rules, the individual may request a reconsideration within 60 days of receipt of the notice denying disability eligibility under the SSI program. If the individual does not appeal the determination within the stated time, he may still request reopening of the determination within 1 year for any reason and within 2 years for good cause. Good cause is defined as new and material evidence, clerical error, or error on the face of the evidence (20 CFR 416.1489). If the individual's request is not made within the stated times, the time may be extended if the individual establishes good cause for the late filling of an appeal request. However, HCFA believes that a separate State Medicaid agency decision is warranted where the individual applies for Medicaid as a noncash recipient and alleges changed circumstances from those present at the time of the SSI determination which would make it unreasonable to consider the SSI determination controlling. This would occur, for example, if the applicant alleges (1) a new and different disabling condition, or (2) a deterioration of his or her condition since SSA made its original determination, occurring at least 12 months after the date of the most recent final SSA determination, and the applicant has not applied for SSI with respect to these allegations. SSA thus has never made a determination with respect to these conditions.

3. Time Limits for Making Medicaid Disability Determinations

As stated earlier, currently a State is required to make eligibility determinations based on disability within 60 days of the date the individual files a written application for Medicaid with the State. In States that have section 1634 agreements with SSA to make Medicaid eligibility determinations based on disability simultaneously with SSI disability determinations, this time limit causes SSA and the State Medicaid agency to duplicate the eligibility determination process when an individual applies separately for Medicaid and SSI. Frequently SSA does not reach its decision by the end of the 60-day period following application for Medicaid. Therefore, in order to comply with the Medicaid time limit, the State Medicaid agency is forced to make an independent disability determination. In some cases, SSA may make a determination that is contrary to that made by the Medicaid agency. Under HCFA's existing policy, if a prior and different conclusion was reached earlier by the State Medicaid agency, the State agency's determination is superseded by the SSI determination. However, FFP is available to the State for Medicaid expenditures for the period during which the State made a reasonable application of SSI policies, definitions, standards and criteria. This system of eligibility determination for disability wastes both State and Federal funds. We propose to

recognize the typical length of time required by SSA to process most disability claims by extending the Medicaid time standard for making eligibility determinations based on disability from 60 days to 90 days.

Most disability claims are processed by SSA within 90 days. While some claims would remain undecided by SSA on the 90th day, extending the time limit for Medicaid State disability determinations from 60 days to 90 days would substantially reduce the number of applications for Medicaid based on disability for which the State must make a determination without the benefit of an SSA disability determination. For example, in the month of April 1987, 50.3 percent of SSI claims were processed by the 60th day, and 73.4 percent of the claims were processed by the 90th day. Thus, the number of Medicaid applications for which a State Medicaid agency determination would have to be made without benefit of an SSA determination on the issue of disability would be reduced by nearly one half of the number of claims processed by SSA by the 90th day. This change would substantially remove the risk that a determination of eligibility based on disability by the State would later have to be reversed because of an SSA determination of ineligibility based on disability. This also would save Medicaid program funds expended for services for individuals who, in fact, are not eligible. This change would not adversely affect recipients because Medicaid eligibility is effective with the date of application and retroactive Medicaid eligibility for the period of up to 3 months before the month of application under § 435.914 must be provided if certain conditions are met.

4. Composition of Disability Review Teams

The Medicaid regulations at 42 CFR 435.541 specify the composition of the State disability review teams for making disability decisions and the information that must be obtained and reviewed by the team. The State disability review team currently must include a physician and a social worker "qualified by professional training and experience." The agency must obtain, for review by the team, a medical report that includes a diagnosis that is based on medical evidence and a "social history." Under SSI (20 CFR 416.1015), the disability determination must be made by a medical or psychological consultant and a disability examiner who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity. The rules for the evidence that is to be considered by SSA for SSI disability determinations under 20 CFR Part 416, Subpart I, do not specifically mention a social history. However, SSA does consider, in addition to the required medical reports and medical assessment, information from other sources such as public and private social welfare agencies, observations by nonmedical sources, and other practitioners that will help the agency to understand how an individual's impairment affects his or her ability to work. It is reasonable to require that Medicaid, which uses the same definition of disability, also employ the same terminology, criteria, standards, presumptions, and factors as are used for the SSI disability determinations. This will help ensure a more uniform application of the definition of disability under section 1614 of the Act.

Questions have been raised as to whether the differences between the terminology used to describe the composition of the review team and the information considered under Medicaid and the terminology used by SSA are meant to affect the outcome of the disability determination process or produce different results (for example, whether or not the taking of a social history, which is not expressly mentioned by SSA for SSI, changes the Medicaid disability determination outcome).

We do not believe that the differences in the specific terminology used to describe the requirements of the Medicaid and SSI review teams produce differences in determinations. However, we recognize that these terminology differences have been, and likely may continue to be, a source of confusion, especially when considered in light of HCFA's policy on the controlling nature of SSI disability determinations. Therefore, we propose to require that the review team must be composed of individuals with the same level of skill as required by SSA under 20 CFR Part 416, Subpart J. We also propose to require that States use the same type of medical evidence and other nonmedical information and the methodology for obtaining and evaluating this evidence and information that is used for making disability determinations by SSA under 20 CFR Part 416, Subpart I. These changes serve to achieve the goal of maximum uniformity in the disability determination process.

Provisions of the Proposed Regulations

1. Proposals for the 50 States, the District of Columbia, and the Northern Mariana Islands

We propose to amend 42 CFR 435.541 to incorporate the conditions under which the State Medicaid agency must make independent determinations of disability, and the effect of any SSA determinations on Medicaid eligibility.

In States that have section 1634 agreements with SSA to make Medicaid eligibility determinations, if an individual applies only for SSI, the State Medicaid agency is not required to make a disability determination. If an individual in a State with a section 1634 agreement applies for both SSI and Medicaid, and the State Medicaid agency makes a disability determination before the SSA determination is made because of the time limit requirement, we propose to add a provision to clarify that an SSA disability determination has a binding prospective effect on a State until such time as SSA changes its determination, in which case the new SSA determination is binding on the State.

We also propose to clarify the regulations to indicate that States must refer to SSA all applicants that allege new or material evidence (as opposed to a subsequent *change* in their condition) that affect previous SSA determinations.

We propose to revise the requirements in § 435.541 relating to the composition of the disability review team and the information reviewed. We propose to change the provision for composition of the disability review team to require that the team must be composed of individuals with the same level of skill as required by SSA for SSI disability determinations under 20 CFR Part 416, Subpart J. We also propose to require States to use the same information and methodologies for making disability determinations as used by SSA in making SSI disability determinations, as specified in 20 CFR Part 416, Subpart I.

We propose to amend § 435.911 to change the time limit imposed on the State Medicaid agency for taking action on Medicaid applications involving disability from 60 days to 90 days from the date of application.

2. Application of Proposed Changes to Territories

Except in one instance, we are not changing the regulations governing the categorical and application requirements for Medicaid eligibility in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436. These

Territories provide Medicaid to disabled individuals on the basis of receipt of or eligibility for assistance under the program of aid to the aged, blind, and disabled under title XVI in existence before the SSI program was created. They also are not subject to the provisions for optional use of more restrictive eligibility requirements than SSI under section 1902(f) of the Act. Persons who do not reside in, or who leave, the 50 States, the District of Columbia, or the Northern Mariana Islands are not eligible for SSI payments. Thus, anyone who lives in or who moves to Guam, Puerto Rico, or the Virgin Islands is not eligible to receive SSI payments even if that person would be eligible if he or she lived in one of the 50 States, the District of Columbia, or the North Mariana Islands. The precedence of an SSI determination of disability in these Territories therefore is not an issue. In addition, because the Territories continue by law to use disability standards under title XVI that have been superseded by SSI in the States and are not eligible to participate in SSI, we have decided that is it not reasonable to require the Territories to follow the review team, information, and evidence requirements applied to SSA in making SSI disability determinations. However, we propose to modify § 436.541 concerning the composition of medical review teams and the information considered in making a determination of disability to make the existing requirements in the Medicaid regulations minimum requirements. If the Territories use a more rigorous set of review team, information, and evidence requirements in determining disability under their programs of aid to the aged, blind, and disabled, they also would be required to follow those requirements for Medicaid disability determinations.

We believe, however, that the Territories should have the same time standard for making determinations on applications based on disability as the States. Therefore, we are proposing to maintain in the regulations under § 436.901 application of the requirements governing the States relating to the time limit for acting on applications. As discussed earlier, we propose to change the time standard from 60 to 90 days. Thus, both States and Territories will be allowed 90 days to complete determinations based on disability. Because the Territories generally must use off-island facilities for consultative examinations, the additional time would permit the Territories to conduct more thorough determinations of eligibility. This change also would retain HCFA's policy that all States and Territories meet the same timeliness standards for action on applications.

Response to Public Comments

Because of the large number of public comments that we normally receive on proposed rules, we cannot acknowledge or respond to them individually. However, we will consider any comments received by the date specified under the Comment Period section of this document and respond to them in the preamble to the final regulations.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet the criteria for a "major rule." A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, neither States nor individuals are considered small entities

These proposed regulations would impact Medicaid disability determinations in two significant ways:

- State Medicaid agencies are currently compelled to determine Medicaid disability eligibility within 60 days of application for Medicaid. SSI, which is not so obligated, may decide contrary to the State's ruling after the 60-day State limit. We estimate that, by extending the time limit imposed on the State Medicaid agencies to 90 days, duplication of effort by section 1634 States and SSI in the determination of disability would be eliminated for approximately 24 percent of the applications. As a result, the Medicaid program would save funds expended for benefits to individuals determined not to be eligible because a Medicaid agency's positive eligibility determination is overruled by SSA in the 60- to 90-day window.
- States would be required to use the same information and methodologies as those used by SSA in making SSI disability determinations. Also, the composition of State medical review teams would be required to be of the same skill level as that required by SSA.

We estimate that total annual Medicaid savings would be about $5 million, shared approximately equally by the Federal Government and the States. Therefore, we have determined, and the Secretary certifies, that these proposed regulations are not a major rule and would not have a significant economic impact on a substantial number of small entities. Neither a regulatory impact analysis nor an initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

These proposed regulations would not impose any new information collection or reporting requirements that would be subject to approval of the Executive Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects

42 CFR Part 435

Aid to Familes with Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Purerto Rico, Supplemental Security Income (SSI), Virgin Islands.

For the reasons set out in the preamble, 42 CFR Chapter IV, Subchapter C, is proposed to be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.541 is revised to read as follows:

§ 435.541 Determinations of disability.

(a) *Determinations made by SSA.* If the agency provides Medicaid to individuals receiving SSI on the basis of disability and if the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act for determining Medicaid eligibility, the following rules and those under paragraph (b) of this section apply:

(1) The agency may not make a determination of disability when the only application is filed with SSA.

(2) The agency may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in § 435.911 on the same issues presented in the Medicaid application. A determination of eligibility for SSI based on disability that is made by SSA automatically confers Medicaid eligibility, as provided for under § 435.909.

(b) *Effect of SSA determinations.* (1) Except in the circumstances specified in paragraph (c)(3) of this section—

(i) In SSA disability determinations is binding on an agency until the determination is changed by SSA.

(ii) If the SSA determination is changed, the new determination is also binding on the agency.

(2) The agency must refer to SSA all applicant who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination, except in cases specified in paragraph (c)(4) of this section.

(c) *Determinations made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist:

(1) The individual applies for Medicaid as a non-cash recipient and has not applied to SSA for SSI cash benefits, whether or not a State has a section 1634 agreement with SSA.

(2) The individual applies both the SSA for SSI and to the State Medicaid agency for Medicaid, the State agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within 90 days from the date of the individual's application for Medicaid.

(3) The individual applies to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria than SSI for determining Medicaid eligibility under its section 1902(f) option or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

(4) The individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA, and—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; or

(ii) Alleges that his or her condition has changed or deteriorated since SSA made its most recent determination of ineligibility or alleges a new period of disability beginning at least 12 months after the date of the most recent final SSA determination, and has not applied to SSA for an SSI determination with respect to these allegations.

(d) *Basis for determinations.* The agency must make a determination of disability as provided in paragraph (c) of this section—

(1) On the basis of the evidence required under paragraph (e) of this section; and

(2) In accordance with the requirements for evaluating that evidence under the SSI program specified in 20 CFR 416.901 through 416.998.

(e) *Medical and nonmedical evidence.* The agency must obtain a medical report and other nonmedical evidence for individuals applying for Medicaid on the basis of disability. The medical report and nonmedical evidence must include diagnosis and other information in accordance with the requirements for evidence with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I.

(f) *Disability review teams*—(1) *Function.* A review team must review the medical report and other evidence required under paragraph (e) of this section and determine on behalf of the agency whether the individual's condition meets the definition of disability.

(2) *Composition.* The review team must be composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 CFR Part 416, Subpart J.

(3) *Periodic reexaminations.* The review team must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this part, using the principles set forth in 20 CFR 416.989 and 416.990. If a State uses the same definition of disability as SSA, as provided for under § 435.540, and a recipient is Medicaid eligible because her or she receives SSI, this paragraph (f)(3) does not apply. The reexamination will be conducted by SSA.

3. In § 435.911, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

§ 435.911 Timely determination of eligibility.

(a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed—

(1) Ninety days for applicants who apply for Medicaid on the basis of disability; and

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as set forth below:

1. The authority citation for Part 436 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.541 is revised to read as follows:

§ 436.541 Determination of disability.

(a) *Basic requirements.* (1) At a minimum, the agency must use the review team, information, and evidence requirements specified in paragraph (b) through (d) of this section is making a determination of disability.

(2) If the requirements for determining disability under the State's APTD or AABD program are more restrictive than the minimum requirements specified in this section, the agency must use the requirements applied under the APTD or AABD program.

(b) The agency must obtain a medical report and a social history for individuals applying for Medicaid on the basis of disability. The medical report must include a diagnosis based on medical evidence. The social history must contain enough information to enable the agency to determine disability.

(c) A physician and social worker, qualified by professional training and experience, must review the medical report and social history and determine on behalf of the agency whether the individual meets the definition of disability. The physician must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this subchapter.

(d) In subsequently determining disability, the physician and social worker must review reexamination reports and the social history and

determine whether the individual continues to meet the definition. Disability is considered to continue until this determination is made.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance)

Dated: June 26, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 27, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-28603 Filed 12-11-87; 8:45 am]

BILLING CODE 4120-01-M

Family Support Administration

45 CFR Part 233

Coverage and Conditions of Eligibility in Financial Assistance Programs; Scope of Payments

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would clarify that States may not provide simultaneous multiple shelter allowances or special need allowances to recipients under Titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act based on the type of housing in which they reside. In addition, the Emergency Assistance (EA) program regulations would be changed to provide that Federal matching would be available only for assistance that meets emergency needs in existence for one period, of no more than thirty (30) consecutive days, in twelve (12) consecutive months. Finally, the regulations would require that a State, subject to Federal approval, specify the maximum amount of assistance to be provided for each type of emergency identified in its State plan. We believe that these proposed changes to the Emergency Assistance regulations will result in the elimination of the currently improper use of the EA program to neet families' continuing needs, which should be dealt with through other ongoing assistance programs.

DATE: Interested persons and agencies are invited to submit written comments concerning these regulations no later than January 28, 1988.

ADDRESSES: Comments should be submitted in writing to the Administrator of the Family Support Administration, Attention: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, 2100 Second Street SW., Washington, DC 20201, or delivered to the Office of Family Assistance, Family Support Administration, Room B-428, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Room B-428, Transpoint Building, 2100 Second Street SW., Washington, DC 20201, telephone 202-245-3290.

SUPPLEMENTARY INFORMATION:

Background

Standard of Need

Federal regulations at § 233.20 require that State agencies determine the need and amount of financial assistance for all AFDC applicants and recipients, as well as, applicants and recipients of Adult Assistance (under Titles I, X, XIV, and XVI (AABD) of the Social Security Act). Section 233.20(a)(2)(i) requires that States establish a statewide standard, expressed in money amounts, to be used in determining need. Federal policy has long recognized that this need standard includes the cost of basic needs recognized as essential for all applicants and recipients.

Generally included are everyday items such as food, clothing, shelter, utilities, household supplies, and personal care items. (See APA-IM-73-18, Need Determination in Public Assistance (Jan. 19, 1973)). State agencies may also include in their need standard the cost of "special needs," as provided in § 233.20(a)(2)(v). Circumstances under which special needs are available must be specified in the State plan and determined on an individual basis. Special needs are items that are essential for some people but *not* for all; e.g., special diets, transportation to receive medical treatment, etc. (APA-IM-73-18).

It is our understanding that some States are currently providing a different shelter allowance as a basic need, or a special need allowance, to title IV-A recipients who are assigned by the State agency to live in housing that is generally not available to other title IV-A recipients. For example, one State specifies in its basic need standard several categories of shelter allowances. One of these categories provides a shelter allowance for a family of four of $270 a month. However, if the same family is assigned to live in a hotel, the family received a shelter allowance of approximately $1470 a month, which also includes money for meals in a restaurant. In another State, a special need depending on family size of $900 to $2000 a month is payable for a family assigned to live in a hotel.

Because shelter is a common need for all families, it appears inequitable to provide some families with a lower shelter allowance than others solely on the basis of the type of housing in which they live. We believe that it is inequitable to provide a $270 a month shelter allowance to a family living in an apartment that ordinarily rents for much more and provide $1470 a month to a comparable family assigned to live in a hotel or motel.

We are also alarmed at the escalating gap between the standard shelter allowance and the allowance for shelter in a hotel in this same State. For example, in 1972, the maximum shelter allowance for a family of three was $249. The comparable allowance for shelter (not including the restaurant allowance) for the same family living in a hotel was $450. By 1984, the maximum shelter allowance had risen to $350, an increase of 40 percent. During this same period the allowance for shelter for a family living in a hotel rose to $1,140, an increase of 153 percent.

We understand that some States may have established multiple and/or special need allowances as a short-term solution to the lack of moderately priced housing. We recognize that the lack of moderate housing is a problem that needs to be addressed. At the same time, Federal programs other than title IV-A exist, and are specifically designed to address these housing problems.

For example, the Department of Housing and Urban Development (HUD) authorizes, through Public Housing Agencies, certificates and housing vouchers (based on availability) which enable households with limited income to pay rent in private housing. The landlord agrees to accept partial rental payment from the family and the balance of the rent from the Public Housing Agency. In addition, HUD funds special housing projects administered by Public Housing Agencies to provide low cost housing. When a family qualifies for this program, housing is provided based on its availability.

HUD also provides assistance to homeless families in the form of Community Development Block Grants made to cities. Pursuant to these grants, buildings may be acquired and/or rehabilitated for use as shelters, and improvements may be made to a building in use as a shelter.

The above examples are among the HUD programs which assist families with housing problems. In addition to Federal housing assistance programs, some States are now taking the initiative to provide housing assistance using funds and guidance provided by State governments. Therefore, in view of the existing programs available to address the lack of sufficient low and moderate cost housing and the inequity of treating comparable families in different ways, we propose these amendments regarding multiple shelter allowances and special need allowances for shelter. The regulations would clarify that such allowances are not permissible under the AFDC program. Specifically, we are proposing to amend § 233.20 to provide that States may not include in their statewide standard, as a basic or special need, an amount for shelter that varies according to the type of living accommodation occupied. In addition, because need is determined under the Adult Assistance programs (titles I, X, XIV, and XVI (AABD) of the Social Security Act) in a similar manner as it is under the AFDC program, we are also proposing to amend § 233.20 to apply to these programs as well. The objective of clarifying the use of special needs funds is not intended to precipitously disrupt the activities of charitable organizations that may have engaged in significant capital investments in order to provide shelter to homeless families. We therefore specifically solicit views on ways to define and ameliorate clear financial hardships associated with amortizing these capital investments that could result directly from this clarification.

Emergency Assistance—Payment of Needs for a Thirty (30)-Day Period

Section 406(e) of the Social Security Act contains the substantive provisions of the Emergency Assistance (EA) program and authorizes States to provide a variety of assistance including money payments, payments in kind, and services to needy families with children where the "child is without available resources" and EA is "necessary to avoid destitution of such child or to provide living arrangements in a home for such child * * *." In addition, the section provides that EA can be "furnished for a period not in excess of 30 days in any 12-month period." It is clear from the language of the Act and the related legislative history (see H. Rep. No. 944, 90th Cong., 1st. Sess., 1967, 109; S. Rep. No. 744, 90th Cong., 1st Sess. 1967, 166; 113 Cong. Rec. 23054 (1967)), that Congress established the EA program to enable State welfare agencies to act quickly to provide families with children with *short-term* assistance and/or services to meet needs arising from emergencies.

Current regulations at § 233.120(b)(3) provide Federal matching for emergency assistance authorized by the State during one period of thirty (30) consecutive days in any twelve (12) consecutive months. This assistance may include payments and services to meet needs which arose before or extend beyond such period.

While many States are complying with the intent of the Act and current regulations in the operation of the EA program, a problem has arisen because some States are improperly using the EA program to cover needs for an extended period of time. For example, as of the fourth quarter of 1986, in one State, families remained in emergency shelter for an average of thirteen (13) months.

Over the past four years, expenditures under the EA program have grown by 65 percent—nearly five times the rate of inflation. In the State which has had the most recent publicity concerning the use of EA funds to house families in hotels, EA expenditures rose 84 percent in those years. By 1986, this State accounted for nearly one-third of the national EA budget. The accelerated growth in EA expenditures both at the national level and in individual States demonstrates the need for clear and specific rules on the scope of allowable EA expenditures.

Accordingly, we propose to amend the current regulations to ensure that States provide only short-term (thirty (30) days or less) assistance and services under the EA program. The changes we are proposing would establish an unambiguous limit on the length of time that needs can be met under the EA program. We propose to amend the regulation to specify that Federal financial participation will be available for only *one* period of thirty (30) consecutive days, or less, in twelve (12) consecutive months. This maximum thirty (30)-day period need not be a calendar month. Needs outside the thirty (30)-day period would not be subject to Federal matching. For example, in an emergency, which results from non-payment of utility bills, Emergency Assistance would be available to pay for one month's (thirty (30) days) actual utility expenses. However, States would have the flexibility to determine the thirty (30)-day period for which to claim assistance under the EA program. Similarly, for bimonthly and quarterly bills, EA would be available to pay a thirty (30)-day portion of those bills. States would, of course, be free to provide for needs beyond the thirty (30)-day period, but through State-only funding, or with funds from other programs, such as the Federally-funded State-managed Low Income Home Energy Assistance program.

We believe that the language of section 406(e) of the Act, which identifies "30 days in any 12-month period" as the time period for which the State may furnish Emergency Assistance, provides clear, distinct and specific authority for limiting the time period for which emergency needs may be met by the EA program to no more than thirty (30) days. Accordingly, this limit is incorporated in this proposed rule. However, in order to provide for State flexibility, we are leaving it to each State to determine, within the limits described above, the period to which the thirty (30) days would apply.

We are also taking this opportunity to propose that a State include in its State plan the maximum benefits in terms of money amounts to be provided for each type of emergency need specified in the plan pursuant to § 233.120(a)(3). This would facilitate review of States' claims for Federal financial participation in EA expenditures by Federal staff. This would also help to assure equitable treatment of applicants and recipients by establishing a clear upper limit on the amount of assistance that may be provided in similar cases. This new requirement would be similar to the current requirement at § 233.20(a)(2)(i) that a State include in its plan a standard expressed in money amounts to be used in determining need and payment amount under the basic AFDC program. The current requirement provides a basis for determining the validity of the AFDC payment in a specific case. This new requirement would serve an analogous purpose under the EA program.

An example of the effect of these proposed changes follows. In State A, the State plan specifies that the State will pay up to $200 for utilities, and up to $400 for shelter for a thirty (30)-day period. A family applying for Emergency Assistance presents the following bills for utility or energy usage during a prior month and rent for that same prior month: Water—$15, gas—$50, electricity—$75, rent—$375, as well as the corresponding bills for the current month: Water—$22, gas—$60, electricity—$66, rent—$375. The State would have the option of claiming $515 for the prior month's rent and utility bills *or* $523 for the current month's bills

for Federal matching as Emergency Assistance.

We believe that these proposed changes to the regulations will result in the elimination of the currently improper use of the EA program to meet families' continuing needs, which should be dealt with through other, ongoing assistance programs. States will be able to respond to emergency needs on a short-term (thirty (30) days) basis, and the integrity of the Emergency Assistance program will be enhanced.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. A regulatory impact analysis is not required because the regulation will not:

(1) Have an annual effect on the economy of $100 million or more; (The Federal annual savings of these regulatory provisions are estimated to be up to $40 million a year.)

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program 13.708, Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: July 24,1987.

Wayne A. Stanton,

Administrator of Family Support Administration.

Approved: August 10, 1987.

Don M.Newman,

Acting Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

1. The authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352 and 1382 note), and sec. 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324.

2. Section 233.20(a)(2)(i) and (v) are revised to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) Standards of assistance. (i) Specify a statewide standard, expressed in money amounts, to be used in determining:

(A) The need of applicants and recipients and

(B) The amount of the assistance payment,

except the State may not include in its standard an amount for shelter that varies due to the type of housing occupied.

* * * * *

(v) If the State agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that: (1) Under AFDC work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs and (2) the State may not provide a special need based on the type of housing occupied.

* * * * *

3. Section 233.120 is amended by redesignating paragraphs (a)(4) and (a)(5) as (a)(5) and (a)(6) respectively, by adding a new paragraph (a)(4), and by revising paragraph (b)(3), to read as follows:

§ 233.120 Emergency assistance to needy families with children.

(a) * * *

(4) Specify the maximum assistance in money amounts that may be provided for each type of emergency need specified in paragraph (a)(3) of this section.

* * * * *

(b) * * *

(3)(i) Federal matching is available only for assistance which a State furnishes for one period of thirty (30) consecutive days, or less, in any twelve (12) consecutive months to meet the actual expense of needs in existence during that period which arise from an emergency or unusual crisis situation, and which continue to exist until aid is furnished.

(ii) In order to claim Federal participation, States must have a reasonable method of determining the value of goods "in kind" or services provided for emergency assistance.

* * * * *

[FR Doc. 87–28343 Filed 12–11–87; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42, 44, 45, 170 and 174

[CGD 76–080]

Hopper Dredge Working Freeboard; Load Line and Stability Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: The U.S. Coast Guard is proposing load line and stability regulations which would allow self-propelled hopper dredges to obtain working freeboards. Private dredging interests have requested authorization to load to a deeper draft (working freeboard) in order to carry more spoil per trip. These regulations would authorize working freeboards upon complying with the proposed requirements and limitations.

DATE: Comments must be received on or before February 12, 1988.

ADDRESSES: (a) Comments may be mailed or delivered to Commandant (G–CMC–21) (CGD 76–080), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593–0001. The comments and materials referenced in this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at theMarine Safety Council (G–CMC–21), Coast Guard

Headquarters, Room 2110, 2100 Second Street SW., Washington, DC 20593-0001.

(b) A draft regulatory evaluation has been included in the public docket for this rulemaking and may be inspected and copied at the Marine Safety Council (G-CMC-21) at the address listed above.

FOR FURTHER INFORMATION CONTACT: LCDR James McCarthy, Office of Marine Safety, Security and Environmental Protection, (202) 267-2988.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the names and addresses of persons submitting them, identify this notice (CGD 76-080) and the specific section of the proposal to which the comment applies, and give the reasons for each comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope.

The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons. No public hearing is planned but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by an interested person raising a genuine issue and it is determined to aid the rulemaking process.

In the **Federal Register** issue of August 2, 1976 (41 FR 32237) the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) to consider developing damage stability standards for hopper dredges. Several comments were received. The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** issue of December 10, 1979 (44 FR 70791). A Supplemental Notice of Proposed Rulemaking (SNPRM) was published 24 January 1980 (45 FR 5780) to insert some inadvertently omitted text. Eight comments were received which raised some additional technical questions that needed to be resolved. Because of this and also because of the time elapsed since the NPRM, the Coast Guard is publishing a second SNPRM for public comment.

Each of the comments received as a result of the NPRM was considered in developing this SNPRM. Only two of the comments were not incorporated into the proposed rules. These dealt with allowing intermediate heel angles greater than 30 degrees and requiring a permeability value of 0.95 for storerooms. Allowing intermediate heel angles of greater than 30 degrees is not being proposed since the 30 degree requirement is an internationally developed standard. Also, some engineering plants are not designed to operate at heel angles greater than 30 degrees and performing effective damage control measures above 15 degrees is very difficult. With respect to permeability values for storerooms, no justification for raising the permeability value to 0.95 was apparent and thus the proposed value remains at 0.60.

In developing the proposed rules, the Coast Guard reviewed Bureau Veritas Guidance Note N.I. 144 BM.1 of January 1971 and consulted with the U.S. Army Corps of Engineers. Additionally an industry association of dredge owners and operators and a dredge designer were consulted when developing this SNPRM.

Drafting Information

The principal persons involved in drafting this document are Mrs. June E. Keller, Office of Marine Safety, Security and Environmental Protection, and William Register, Office of the Chief Counsel.

Discussion of Proposed Rulemaking

(a) Background Information

Most U.S. flag hopper dredges over 79 feet in length that are engaged in domestic or foreign voyages by sea, are subject to the load line requirements in 46 CFR Part 42. Similarly, most U.S. flag hopper dredges over 79 feet in length that engages solely on Great Lakes voyages are subject to load line requirements in 46 CFR Part 45. A hopper dredge is assigned a freeboard under the provisions of 46 CFR Part 42 or Part 45 as appropriate.

Between 1902 and 1977, the U.S. Army Crops of Engineers was the principal builder and operator of hopper dredges in the United States. The proposed regulations are the result of private marine interests entering the field of hopper dredge operation. These private interests found the freeboard calculated in accordance with the load line regulations to be economically unfeasible and requested that the Coast Guard consider allowing a further reduction in freeland based upon standards established by Bureau Veritas and published in N.I. 144 B.M.1. This lesser freeboard, known as a working freeboard, is one-half of the Type B or modified Type B freeboard.

As noted in the draft evalulation, the Coast Guard has already authorized 10 commercial dredges to operate with working freeboards. The working freeboards were assigned generally in accordance with the requirements proposed in this rulemaking. No difficulties have been encountered for vessels operating with these reduced freeboards.

(b) Description of Proposed Rules

The proposed rules contain two parts, one dealing with load line requirements, the other dealing with stability requirements. The portion concerning load lines is being placed in 46 CFR Part 44 in anticipation of consolidating other load line rules involving limited service domestic voyages in one location in a future rulemaking under Docket Number CGD-87-013. The portion concerning stability requirements is being placed in a new Subpart I added to 46 CFR Part 174. Conforming amendments are also being made to 46 CFR, Parts 42, 45 and 170.

Addition of the new Subpart C to Part 44 will require updating of certain cross references to Part 44 in Part 42. These editoral changes will be made when publishing final rules.

The principal differences between this SNPRM and the previous NPRM are that the bottom damage requirements have been removed and the maximum value for dredged spoil specific gravity has been lowered to 1.8.

Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 28, 1979). The draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The economic impact of this proposal would involve calculation hours spent by naval architecture and engineering firms hired by the dredge owners and operators. The dredge owners and operators would have to pay for the services of the naval architects and engineers but would recoup their costs quickly because they would be able to load to deeper drafts and carry more dredged spoil per trip to the dump site. Vessels which have been granted working freeboards during the past six years on a case by case basis already meet the damage stability requirements in the proposed rules. The proposed rules are not a requirement for all hopper dredges. Only those dredges desiring an increased capacity would be

required to meet the requirements described here.

Compared to the current procedure for obtaining a working freeboard the procedures set out in the proposed rules would cost dredge owners less money. This is because the necessary procedure would be clearly spelled out in the Code of Federal Regulations (CFR). Both the dredging industry and the Coast Guard would spend less time (money) since all of the necessary instruction would be in the CFR.

Regulatory Flexibility Act

Based upon the information in the draft evaluation, the Coast Guard certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rules would result in an increase in information collection requirements for these types of vessels to the extent that the industry chose to utilize this voluntary rule. Procedures for utilizing existing OMB control numbers 2115–0043 and 2115–0559 have been initiated.

Environmental Impact

An environmental assessment has been performed and placed in the draft regulatory evaluation. It has been determined that this regulation is categorically excluded from further environmental documentation. The Categorical Exclusion for Hopper Dredge Working Freeboard, Load Line and Stability Requirements has been prepared and placed in the rulemaking docket. It is available for examination and copying as noted in the **ADDRESSES** section above.

List of Subjects

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 44

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 45

Great Lakes, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 174

Marine safety, Vessels.

In accordance with the foregoing, the Coast Guard proposes to amend Subchapters E and S of Title 46, Code of Federal Regulations as follows:

PART 42—[AMENDED]

1. In Part 42, by revising the authority citation to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

2. In § 42.03–5, by adding paragraph (e) to read as follows:

§ 42.03–5 U.S.—flag vessels subject to the requirements to this subchapter.

* * * * *

(e) Hopper dredges engaged in limited service domestic voyages. Self-propelled hopper dredges over 79 feet (24 meters) in length on limited service domestic voyages within 20 nautical miles (37 kilometers) from the mouth of a harbor of safe refuge with working freeboards are subject to the provisions of this subchapter that apply to a Type "B" vessel and Subpart E, Part 44 of this chapter.

3. In § 42.03–30, by adding paragraph (b)(4) to read as follows:

§ 42.03–30 Exemptions for vessels.

* * * * *

(b) * * *

(4) For self-propelled hopper dredges engaged on international voyages or on limited service domestic voyages.

Note: These dredges are required to have hatch covers on open hoppers unless otherwise exempted from the requirements in Subpart 42.15 of this part.

* * * * *

4. In § 42.03.30, by revising paragraph (d) to read as follows:

* * * * *

(d) A vessel given one or more exemptions under this provisions of paragraph (b)(2) or (b)(3) of this section will be issued a Load Line Exemption Certificate using Form E1. To obtain exemption under paragraph (b)(4) of this section from applicable hatch cover requirements in Subpart 42.15 of this part, compliance with § 174.820(c) of this chapter must be shown and the Load Line Exemption Certifictate will be endorsed with the provisions that only seawater is permitted in the vessel's hoppers. The Load Line Exemption Certificate is in lieu of a regular load line certificates, and the vessel is considered to be in compliance with applicable load line requirements.

5. In § 42.20–5, by revising the introductory text of paragraph (c) to read as follows:

§ 42.20–5 Freeboard assignment: Type "B" vessel.

* * * * *

(c) A Type "B" vessel that is greater than 100 meters (328 feet) in length and any hopper dredge meeting the requirements in Subpart C, Part 44 of this chapter may have its freeboard reduced from that required in paragraph (a) of this section under the provisions of paragraphs (d) and (e) of this section provided that—

* * * * *

6. In Part 44, by revising the authority citation to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

7. In Part 44, by revising the title to read as follows:

PART 44—DOMESTIC (LIMITED SERVICE) VOYAGES

8. In Part 44, by revising the title of "Subpart 44.01—Administration" to read as follows:

Subpart A—Administration

9. In Part 44, by revising the title of "Subpart 44.05—Rules of Assignment; Special Service" to read as follows:

Subpart B—Rules of Assignment; Special Service

10. In Part 44, by adding a new Subpart C to read as follows:

Subpart C—Rules of Assignment; Hopper Dredge Working Freeboard

Sec.

Subpart C—Rules of Assignment, Hopper Dredge Working Freeboard

§ 44.300 Applicability.

This subpart applies to each self-propelled hopper dredge that requests a working freeboard under the provisions of this subpart.

§ 44.310 Definitions.

(a) "Hopper dredge" means a self-propelled dredge with internal tanks (hoppers) for storing the dredged material.

(b) "Working freeboard" means one half the distance between the mark of the load line assigned under this subchapter and the freeboard deck.

§ 44.320 Submission of plans and calculations.

To request a working freeboard, calculations, plans, and stability information necessary to demonstrate

compliance with this subpart must be submitted to:

Commanding Officer, Marine Safety Center, 2100 Second Street SW., Washington, DC 20593, or

American Bureau of Shipping, 45 Eisenhower Drive, Paramus, NJ 07652-0910.

§ 44.330 Requirements for obtaining working freeboards for hopper dredges.

A hopper dredge may be issued a working freeboard of not less than one-half of the assigned freeboard on either a limited service domestic voyage load line certificate of a Great Lakes load line certificate provided the following conditions are met:

(a) The structure of the hopper dredge has adequate strength for draft corresponding to the working freeboard. Dredges built and maintained in conformity with the requirements of a classification society recognized by the Commandant are considered to possess adequate strength for the purposes of the applicable requirements in this subpart unless deemed otherwise by the Commandant.

(b) The hopper dredge meets the requirements of Part 174 of this chapter.

(c) The hopper dredge has an internal draft indicator on the bridge that indicates the fore and aft drafts and the mean draft of the dredge and is clearly marked at the drafts corresponding to both the working freeboard and the assigned freeboard.

(d) The hopper dredge is operated at the working freeboard only in accordance with the restrictions prescribed in § 44.350 of this part.

§ 44.340 Hopper dredges with existing working freeboards.

Hopper dredges with working freeboard assignments authorized before (*the effective date of these regulations*) need not meet the requirements in this subpart. However, to obtain a lesser working freeboard than currently assigned, the dredge must meet the requirements in this subpart.

§ 44.350 Operating restrictions.

(a) A dredge may be operated at a working freeboard only under the following conditions:

(1) Seas do not exceed 10 feet and winds do not exceed 35 knots.

(2) The hopper dredge does not proceed more than 20 nautical miles (37 kilometers) from the mouth of a harbor of safe refuge.

(3) The specific gravity of the spoil carried does not exceed the highest specific gravity of spoil used in the stability calculations required by Subchapter S of this chapter.

(b) The restrictions in paragraph (a) of this section must appear on the face of the dredge's load line certificate.

PART 45—[AMENDED]

11. In Part 45, by revising the authority citation to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

12. In section 45.9, by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 45.9 Seasonal application of load lines for vessels not marked under this part.

* * * * *

(b) Except as provided in paragraph (c) of this section, no allowance for lesser freeboards apply under any circumstances.

(c) Allowances are made for hopper dredges operating at working freeboards as permitted by Part 44, Subpart C of this chapter.

PART 170—[AMENDED]

13. In Part 170, by revising the authority citation to read as follows:

Authority: 43 U.S.C. 1333(d); 45 U.S.C. 3306, 3703, and 5115; 49 CFR 1.46

14. In Part 170, by adding § 170.140 to read as follows:

§ 170.140 Operating information for self-propelled hopper dredge with a working freeboard.

In addition to the stability information required in § 170.110(d) of this part, the stability booklet of a self-propelled hopper dredge with a working freeboard must state the maximum specific gravity allowed for dredged spoil.

15. In section § 170.248, by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 170.248 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this subpart applies to vessels with watertight doors in bulkheads that have been made watertight to comply with the flooding or damage stability regulations in this subchapter.

* * * * *

(c) A watertight door on a self-propelled hopper dredge with a working freeboard must comply with § 170.850 of this subchapter.

16. In Part 170, by adding § 170.300 to read as follows:

§ 170.300 Free surface of spoil in hopper dredge hoppers.

(a) For hopper dredges, when performing the calculations required by this subchapter, the free surface effect of consumable liquids must be assumed to include the free surface effect of the dredge spoil in the hopper.

(b) For hopper dredges with working freeboard assignments, the following assumptions apply when doing the calculations required by § 174.820(b) of this chapter:

(1) If the dredged spoil is assumed to be jettisoned, the free surface of the dreged spoil may be neglected.

(2) If the dredged spoil is not assumed to be jettisoned, the free surface of the dredged spoil must be calculated by the moment of transference method.

PART 174—[AMENDED]

17. In Part 174 by revising the authority citation to read as follows:

Authority: 46 U.S.C. 3306, 5115; 43 U.S.C. 1333(d); 49 CFR 1.46, except as otherwise noted.

18. In § 174.005, by adding paragraph (i) and reserving paragraphs (f)—(h) to read as follows:

§ 174.005 Applicability.

* * * * *

(f)—(h) [Reserved]

(i) Self propelled hopper dredges with a working freeboard assignment.

19. In Part 174, by adding Subpart I to read as follows:

Subpart I—Requirements for Hopper Dredges With Working Freeboard Assignments.

Sec.

Subpart I—Requirements for Hopper Dredges With Working Freeboard Assignments

§ 174.800 Applicability

This subpart applies to each new and existing self-propeller hopper dredge with a working freeboard assignment obtained in accordance with Part 44, Subpart C, of this chapter.

§ 174.810 Definitions.

(a) "Hopper dredge" means a self-propelled dredge with internal tanks

(hoppers) for storing the dredged material.

(b) "Working freeboard" means one half the distance between the mark of the load line assigned under this subchapter and the freeboard deck.

(c) "Length" or "L" means the same as the load line length "LLL" defined in §170.055(h)(5) of this chapter.

(d) "Beam" or "B" means the same as the term "beam" defined in §170.055(c) of this chapter.

§ 174.820 Calculations.

(a) Each hopper dredge must be shown by design calculations to meet the requirements in § 170.170 and § 170.173 this chapter in each condition of loading and operation, including each condition described in paragraph (d) of this section.

(b) Each hopper dredge must be shown by design calculations to meet the survival conditions of § 174.843 of this part in each condition of loading and operation, including each condition described in paragraph (d) of this section, assuming the character and extent of damage specified in § 174.841 of this part.

(c) To obtain the exemption under § 42.03–30(b)(4) of this chapter, the calculations required by paragraph (a) of this section must assume that the hoppers are full of seawater.

(d) The calculations required by this section must take into account a sufficient number of loading conditions to identify the condition in which the vessel is least stable (i.e. the most severe loading condition). The following range of dredged spoil specific gravities and drafts must be assumed in these calculations:

(1) *Specific gravity:* From 1.02 up to and including the maximum as prescribed in § 174.830(a) of this subpart.

(2) *Draft:* Up to and including the draft corresponding to the working freeboard. All drafts must include the maximum trim that can be expected.

(e) When doing the calculations required by § 174.820 of this part for a dredge with an open hopper, spillage of spoil from the hopper resulting from changing trim and/or angle of heel must be taken into account.

§ 174.830 Assumptions.

The following assumptions must be made when doing the calculations required by § 174.820 of this part:

(a) Except as provided in paragraph (c) of this section dredged spoil in the hopper must be assumed to be a homogeneous liquid with a maximum specific gravity of 1.8.

(b) Each righting arm calculation must be prepared assuming free trim.

(c) A maximum specific gravity lower than 1.8 may be assumed if the following is demonstrated to the satisfaction of the cognizant Officer in Charge, Marine Inspection:

(1) Spoil of a specific gravity higher than that proposed is not known to exist in intended areas of operation of the dredge.

(2) The dredge has a means to monitor the specific gravity of the spoil while dredging.

§ 174.841 Extent and character of damage.

(a) The calculations required by § 174.820(b) of this subpart must show that the dredge can survive damage at any location along the length of the vessel including at a transverse bulkhead.

(b) The damage described in paragraph (a) of this section must be assumed to be from the most disabling side penetration having the following dimensions:

(1) *Longitudinal extent:* $(0.495)(L^{2/3})$ or 47.6 ft., whichever is less. In metric units, the longitudinal extent is $(⅓(L)^{⅔}$ or 14.5 meters, whichever is less.

(2) *Transverse extent:* B/5 or 37.7 ft. (11.5m), whichever is less. This is measured inboard from the dredge's side at a right angle to the centerline at the draft corresponding to the working freeboard.

(3) *Vertical extent:* from the base line upward without limit.

§ 174.842 Permeability.

When doing the calculations required by § 174.820(b) of this subpart, the following permeabilities of floodable spaces must be assumed:

(a) Storerooms; 0.60.

(b) Accommodation spaces; 0.95.

(c) Machinery space; 0.85.

(d) Consumable liquid tanks; 0.00 or 0.95, whichever results in the more disabling condition.

(e) Cargo tanks; the permeability determined from the actual density and amount of liquid carried in the tank.

§ 174.843 Damage survival.

A hopper dredge is presumed to survive assumed damage if it meets the following conditions:

(a) *Heel angle.* The maximum angle of heel in each stage of flooding must not exceed 30 degrees or the angle where progressive flooding would take place, whichever is less. Openings closed by weathertight doors or hatch covers are considered to be openings through which progressive flooding may take place. The following are considered to be openings through which progressive flooding will not take place:

(1) Watertight manhole covers.

(2) Watertight flush scuttles.

(3) Small watertight cargo tank hatch covers that maintain the watertight integrity of the deck.

(4) Class 3 sliding watertight doors.

(5) Side scuttles of the non-opening type.

(b) *Final waterline.* The final waterline, taking into account sinkage, heel, and trim, must be below the lowest edge of each opening through which progressive flooding may take place.

(c) *Range of stability.* The residual righting arm curve must be positive and have a minimum range of 20 degrees beyond the angle of equilibrium. The maximum righting arm within the 20 degree range must be at least 4 inches (100mm). Each opening within, or partially within, the 20 degree range beyond the angle of equilibrium must be at least weathertight. After flooding or equalization as allowed by § 174.844, the hopper dredge's metacentric height must be at least 2 inches (50mm) when the dredge is in an upright position.

§ 174.844 Equalization.

When doing the calculations required by § 174.820(b) of this subpart:

(a) Equalization arrangements requiring mechanical aids as such as valves may not be taken into account.

(b) Spaces joined by ducts with large cross-sectional areas may be assumed to be common spaces only if equalization takes place within 15 minutes after flooding begins.

§ 174.845 Jettisoning of spoil.

(a) When doing the calculations required by § 174.820(b) of this subpart for a bottom dump door hopper dredge, the assumption that the spoil is jettisoned immediately after damage and that the bottom doors remain open can be made only if the following criteria are met:

(1) The bottom dump doors are designed so that they may be completely opened from the closed position within two minutes even if the main power source is lost or the bottom door actuating mechanism is damaged.

(2) The discharge area through the bottom doors is equal to or greater than 30 percent of the waterplane area at the draft corresponding to the working freeboard.

(3) Asymmetrical jettisoning of the spoil is not possible.

(4) The bottom dump doors can be completely opened from the bridge under the conditions prescribed in paragraph (a)(1) of this section.

(b) When doing the calculations required by § 174.820(b) of this part for a split hull hopper dredge, the assumption that the spoil is jettisoned immediately after damage can be made only if the following criteria are met:

(1) The split hulls are designed so that the complete separation is effected within two minutes even if the main power source is lost or the actuating mechanism is damaged.

(2) It is demonstrated to the Commanding Officer, Marine Safety Center, either by calculations or by operational tests, that the hulls can separate sufficiently to allow the dredged material to dump without bridging.

(3) *Asymmetrical* jettisoning of the spoil is not possible.

(4) The split hull actuating mechanism can be operated from the bridge under the conditions prescribed in paragraph (b)(1) of this section.

§ 174.850 Watertight doors.

Each watertight door below the bulkhead deck must be one of the following:

(a) If the sill of the door is shown by the calculations required by § 174.820 of this part to be less than 24 inches above the final waterline in each damage condition up to and including the maximum amount of assumed damage, then a sliding watertight door (Class 3) approved under § 163.001 of this chapter must be used.

(b) If the sill of the door is shown by the calculations required by § 174.820 of this part to be greater than 24 inches above the final waterline, in each damage condition up to and including the maximum amount of assumed damage, then a quick acting hinged watertight door (Class 1) may be used.

§ 174.860 Collision bulkhead.

Each hopper dredge must be fitted with a collision bulkhead not less than 0.05L abaft of the forward perpendicular nor greater than 0.08L abaft of the forward perpendicular.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

Dated: October 22, 1987.

[FR Doc. 87-28633 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Part 245

Defense Federal Acquisition Regulation Supplement (DFARS); Material Requirements Planning Systems

AGENCY: Department of Defense (DoD).

ACTION: Notice of intent to develop a proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council invites public comment concerning the need to develop changes to DFARS Part 245 relating to material management and accounting systems.

DATE: Comments should be submitted to the address shown below not later than February 12, 1988 to be considered in the possible formulation of a proposed rule. Please cite DAR Case 87-760 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Director, Cost, Pricing and Finance, DASD(P), Rm 3C800, Pentagon Washington, DC 20301-8000.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Robert A. Gustin, Office of Cost, Pricing And Finance, Deputy Assistant Secretary of Defense for Procurement, Telephone (202) 697-6710.

SUPPLEMENTARY INFORMATION:

A. Background

There has been a great deal of attention placed on automated material management and accounting systems and their ability to meet current rules and regulations. There were a number of Defense Contract Audit Agency reports, newspaper stories, and Congressional hearings on this subject over the past nine months. As a result of the foregoing, the DAR Council solicits public comments on preliminary guidance developed to help evaluate material management and accounting systems under existing rules. All comments will receive full consideration by the DAR Council to determine the optimum approach in evaluating MRP systems.

Material management and accounting systems must have adequate internal accounting and administrative controls to assure system and data integrity, and:

1. Have an adequate system description including policies, procedures, and operating instructions compliant with FAR/CAS criteria as interpreted by this guidance for all elements of affected cost.

2. Assure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions. A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to assure that requirements are both valid and appropriately time-phased. If systems have accuracy levels below those above, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy levels, and/or (ii) the cost to meet the accuracy goals is excessive in relation to the impact on the Government.

3. Provide a mechanism to identify, report, and resolve system control weaknesses and manual overrides. Systems should identify operational exceptions such as excess/residual inventory as soon as known.

4. Provide audit trails and maintain records necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired. Both manual records and those in machine readable form will be maintained for the prescribed record retention periods.

5. Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy level, and/or (ii) the cost to meet the accuracy goal is excessive in relation to the impact on the Government.

6. Provide detailed description(s) of circumstances which will result in manual or system generated transfers of parts.

7. Maintain a consistent, equitable, and unbiased logic for costing of material transactions. The contractor will maintain and disclose a written policy describing the transfer methodologies. The costing methodology may be standard or actual cost, or any of the CAS 411.50(b) inventory costing methods. Consistency must be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

a. The system should transfer parts and associated cost within the same billing period.

b. In the few circumstances where it may not be appropriate to transfer parts and associated cost within the same billing perioid, use of a "loan/payback"

technique must be approved by the ACO. When the technique is used there must be controls to ensure that: (i) Parts are paid back expeditiously, (ii) procedures and controls are in place to correct any overbilling that might occur, (iii) at a minimum the borrowing contract and the date the part was borrowed are identified monthly, and (iv) the cost of the replacement part is charged to the borrowing contract.

8. Where allocations from common inventory accounts are used, have controls in addition to the requirements of Key Elements in 2 and 7 above to ensure that:

a. Reallocations and any creidt due are processed no less frequently than the routine billing cycle;

b. Inventories retained for requirements which are not under contract are not allocated to contracts;

c. Algorithms are maintained based on valid and current data.

9. Have adequate controls to ensure that physically commingled inventories that may include materials charged or allocated to fixed price, cost type, and commercial contracts do not compromise requirements of any of the above Key Elements.

10. Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

List of Subjects in 48 CFR Part 245

Government procurement.

Dated: December 8, 1987.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 87-28606 Filed 12-11-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1988-89 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this proposed rule describes the zones in which the use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1988-89 season. The zones described consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1987-88 hunting season, (2) the added counties identified for 1988-89 in Appendix N of the Final Supplemental Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information), and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot for waterfowl and coot hunting are so noted. Additionally, this proposed rule would amend existing regulations to include: (a) The United States territorial waters beyond State boundaries, the State of Alaska, and the Commonwealths of Puerto Rico and Virgin Islands in the nationwide ban on the use of lead shot for waterfowling; (b) redefinition of terms to incorporate the concept of multiple species in the 50 CFR aggregate bag definition; and (c) a requirement for nontoxic shot for taking captive-reared mallards in nontoxic shot zones.

DATE: Comments on this proposal will be accepted until January 13, 1988.

ADDRESS: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254-3207).

SUPPLEMENTARY INFORMATION: This rule implements the second year (1988-89) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by 1991-92, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States published in June 1986 (FES 86-16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of Interior's (Secretary) responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Secretary's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987-88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that porposed rule was published, as noted above, in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision (ROD) confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rule for the 1987-88 waterfowl hunting season published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352).

Counties scheduled to convert in their entireties to nontoxic shot in the 1988-89 waterfowl season are those counties having had an average annual waterfowl harvest of 15 or more per square mile over the 10-year period 1971-80. As scheduled, approximatley 73 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1988-89 waterfowl hunting season. However, the conversion of many entire States ahead of the schedule is estimated to increase the percentage of the total harvest occurring in nontoxic shot zones to be between 80 and 90 percent in this 1988-89 watefowl hunting season.

In addition to the scheduled zones from Appendix N of the SEIS and the unscheduled zones added by the States, the Fish and Wildlife Service (FWS) is proposing in this rule to add other areas that have the potential for contributing to lead poisoning in waterfowl and raptors and/or the potential for creating administrative or enforcement problems. Also, other regulatory changes are being

proposed in this rule to clarify and update conditions under which migratory birds may be taken in the open seasons.

In the course of amending § 20.21(j) of 50 CFR, that was effected in the 1987–88 waterfowl hunting season final nontoxic shot zone rule of Tuesday, July 21, 1987 (52 FR 27352), it was noted that an ambiguity existed with regard to the concept of "aggregate bag." "Aggregate bag" was clarified in Issue 1 of that final rule, and it was noted that the existing definitions in § 20.11 of 50 CFR would be expanded to include a species aspect. Thus, this rule adds a definition for "aggregate bag" and redefines "daily bag limit," "aggregate daily bag limit," "possession limit," and "aggregate possession limit" at § 20.11 to incorporate those aggregate bag concepts expressed in 52 FR 27352. Section 20.21(j) is being amended to include the word "swans" that was inadvertently omitted when previously amended, as cited above.

The Commonwealths of Puerto Rico and the Virgin Islands also hunt waterfowl and coots in areas that are quite limited and, as a consequence, heavily shot over. In order to protect waterfowl and other wetland-associated migratory bird resources, the FWS is proposing in this rule to require nontoxic shot for the hunting of waterfowl, coots and certain other species in the Commonwealths of Puerto Rico and the Virgin Islands beginning in the 1991–92 hunting season. This regulation change is proposed for § 20.101 of 50 CFR.

Previously, in the SEIS, the State of Alaska was offered the options either to (1) establish a zoning schedule for the conversion interval to 1991–92 according to the adopted criteria outlined in Appendix K of the SEIS (also 51 FR 42103), or (2) defer conversion until the final year. It is apparent that the State of Alaska is electing to take the second alternative. Thus, this proposed rule would change § 20.102 of 50 CFR to reflect that Alaska will convert statewide to nontoxic shot for waterfowling in the 1991–92 hunting season.

Although there is some opportunity for sea ducks to consume lead shot deposited on the seabed as a result of waterfowling, the greatest potential harm probably results from the availability of lead in the form of embedded shot. Waterfowl carrying embedded shot may eventually become available to bald eagles and other opportunistic avian feeders. Additionally, enforcement of nontoxic shot requirements in coastal counties may be difficult due to the relative obscurity of boundary references, e.g., county or zonal boundaries that follow tide lines, conventional State-claimed seaward limits, etc. To ensure that potential problems are addressed, the FWS is in this rule proposing that conversion in the final year (1991–92) be expanded to include all areas within the United States offshore territorial limits, i.e., United States waters seaward of those claimed by the separate coastal States. This regulation change is proposed for § 20.105 of 59 CFR.

The FWS is proposing in this rule to update § 20.107 of 50 CFR by adding the other States that make provisions for swan hunting, i.e., North Carolina, North Dakota and South Dakota, and by changing the species' English name to be consistent with the American Ornthologists' Union (AOU) 1983 Check-List of North American Birds (6th edition) listing of Tundra Swan (*Cygnus columbianus*, Ord).

Finally, this rule proposes to amend § 21.13 of 50 CFR, Permit exceptions for captive-reared mallards, to provide application of § 20.108, Nontoxic shot zones. This is proposed on the basis that shooting preserve areas usually host wild waterfowl at one time or another, which are then exposed to the spent shot. Application of § 20.108 to shooting preserves will eliminate these areas as sources of lead shot and potential lead poisoning mortality. Shooting preserve areas that heretofore have been excepted, because of the inapplicability of Section 20, are proposed in this rule to convert to steel shot for taking captive-reared mallards in the 1988–89 waterfowl hunting season; those areas remaining to convert after 1988–89 are proposed to do so according to the county schedule located in Appendix N of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States.

In summary, this rule proposes to amend 50 CFR as follows:

—*Section 20.11.* Add a definition of "aggregate bag" and revise four other related terms, to be effective for the 1988–89 season.

—*Section 20.21(j).* Add the word "swans" to the parenthetical listing of Anatidae that are covered by the nontoxic shot requirement, to be effective for the 1988–89 season.

—*Section 20.101.* Add language that requires conversion of nontoxic shot for hunting waterfowl, coots and certain species in Puerto Rico and the Virgin Islands in the 1991–92 season.

—*Section 20.102.* Add language that requires conversion to nontoxic shot for hunting waterfowl in Alaska in the 1991–92 season.

—*Section 20.105.* Revise existing language to require conversion to nontoxic shot for hunting waterfowl, coots and certain other species in United States territorial waters seaward of State boundaries, to be effective for the 1991–92 season.

—*Section 20.107.* Revise existing language to include the States of North Carolina, North Dakota and South Dakota with those having frameworks for swan seasons, and change the English name of the swan species from "whistling" to "tundra," to be effective in the 1988–89 season.

—*Section 20.108.* Add SEIS Appendix N areas to expand existing nontoxic shot zones for the 1988–89 waterfowl hunting season.

—*Section 21.13.* Add language that requires the use of nontoxic shot for taking captive-reared mallards in shooting preserves and similarly permitted areas, to become effective immediately in the 1988–89 waterfowl hunting season for those shooting preserve areas in zones that have previously converted or will convert by the 1988–89 season.

However, those shooting preserve areas remaining to convert after the 1988–89 season will convert according to the SEIS Appendix N schedule.

Based on the October 9, 1987, Ninth Circuit Court of Appeals ruling in *Alaska Fish and Wildlife Federation and Outdoor Council, Inc.* v. *Frank L. Dunkle, et al.*, No. 86–3657, the authority citation for Part 20, Subchapter B, Chapter I of Title 50 would be revised to remove the Alaska Game Act of 1925 reference.

Since 1978, the FWS has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the appropriations act for the Department of the Interior each year since 1978 (see e.g., Pub. L. 98–473, section 305; Pub. L. 99–190, section 313; Pub. L. 99–591, Sec. 317). While this restriction is in force, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones as required by this restriction, when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act and, in the case of zones established for bald eagle protection, the Endangered Species Act and the Bald and Golden Eagle Protection Act of 1940, as

amended (16 U.S.C. 668–668d; 54 Stat. 250).

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determdination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significlant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

Table 1.—Counties proposed to be added in 1988–89 to the existing zones where the hunting of waterfowl, coot and certain other species is limited to the use of nontoxic shot.[1]

Alabama
- Limestone

Arkansas
- Conway
- Crittenden
- LaFayette
- Lincoln
- Phillips
- Pulaski

California
- Alameda
- Marin
- Stanislaus

Colorado
- Boulder

Connecticut
- All lands and waters of all counties of the State.

Florida
- Glades

Idaho
- Payette

Illinois
- Bond
- Fayette
- Jersey
- Kane
- Marshall
- McHenry
- Woodford

Indiana
- All lands and waters of all counties of the State.

Kansas
- Linn

Louisiana
- Assumption
- Avoyelles
- Caldwell
- Iberia
- Rapides

Massachusetts
- Dukes

Michigan
- Allegany
- Barry
- Monroe
- Roscommon
- Wayne

Missouri
- All lands and waters of all counties of the State.

New Jersey
- Hudson

New York
- All lands and waters of all counties of the State.

North Carolina
- Beaufort
- Washington

North Dakota
- Bottineau
- Griggs
- McIntosh
- Sargent

Ohio
- Erie

Oregon
- Marion
- Washington

Pennsylvania
- All lands and waters of all counties of the State.

Rhode Island
- All lands and waters of all counties of the State.

South Carolina
- Allendale
- Bamberg
- Barnwell
- Calhoun
- Clarendon
- Darlington
- Dillon
- Dorchester
- Florence
- Hampton
- Horry
- Jasper
- Lee
- Marion
- Marlboro
- Orangeburg
- Sumter
- Williamsburg

South Dakota
- Aurora
- Bon Homme
- Hamlin
- Marshall
- Roberts

Tennessee
- Jefferson
- Tipton

[1] Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 15 or more waterfowl harvested per square mile; as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons. Differences between this Table and the Appendix N schedule reflect changes initiated by the States to accelerate county nontoxic shot conversions.

Texas

Liberty

Vermont

Franklin

Virginia

Accomack

Washington

Clallam
Pacific
Thurston
Walla Walla

Authorship

The primary author of this proposed rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects

50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

50 CFR Part 21

Depradations, Falcons, Permits, Waterfowl.

Accordingly, Parts 20 and 21, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations are proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 would be revised to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec., 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.11 is proposed to be amended by adding a definition for "Aggregate bag limit" and revising the definitions for "Daily bag limit," "Aggregate daily bag limit," "Possession limit" and "Aggregate possession limit," to read as follows (The introductory paragraph is republished.):

§ 20.11 Meaning of terms.

For the purpose of this part, the following terms would be construed, respectively, to mean and to include:

* * * * *

"Aggregate bag limit" means a condition of taking in which two or more usually similar species may be bagged (reduced to possession) by the hunter in predetermined or unpredetermined quantities to satisfy a maximum take limit.

"Daily bag limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

"Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one species or for any one specified geographic area in which taking occurs.

"Possession limit" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

"Aggregate possession limit" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specific geographic areas in which taking and possession occurs.

* * * * *

3. Section 20.21(j)(1) is proposed to be revised to read as follows (The introductory paragraph is republished):

§ 20.21 Hunting methods.

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No persons shall take migratory game birds:

* * * * *

(j) * * * (1) This restriction applies only to the taking of Anatidae (ducks, geese [including brant] and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and

4. Section 20.101 would be revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

This section provides for the annual hunting of certain doves, pigeons, ducks, coots, gallinules and snipe in Puerto Rico; and for certain doves, pigeons and ducks in the Virgin Islands. In these Commonwealths, the hunting of waterfowl and coots (and other certain species, as applicable) must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

5. Section 20.102 would be revised to read as follows:

§ 20.102 Seasons, limits and shooting hours for Alaska.

This section provides for the annual hunting of certain waterfowl (ducks and geese [including brant]), snipe and sandhill cranes in Alaska. In Alaska, the hunting of waterfowl must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

6. Section 20.105 is proposed to be revised to read as follows:

§ 20.105 Seasons, limits and shooting hours for waterfowl, coots and gallinules.

This section provides for the annual hunting of certain waterfowl (ducks, geese [including brant], coots and gallinules in the 48 contiguous United States. The regulations are arranged by the Atlantic, Mississippi, Central and Pacific Flyways. These regulations often vary within Flyways or States, and by time periods. Those areas of the United States outside of State boundaries, i.e., the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.21(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991–92 season.

7. Section 20.107 is proposed to be revised to read as follows:

§ 20.107 Seasons, limits and shooting hours for tundra swans.

This section provides for the annual hunting of tundra swans in North Carolina, North Dakota, South Dakota and Utah, and in designated areas of Montana and Nevada.

8. Section 20.108 would be revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

All lands and waters within the State of Connecticut have been designated for nontoxic shot use.

Delaware

1. Kent and New Castle Counties.

2. All State and/or Federally owned property within the following areas of Sussex County:

A. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.

B. Cape Henlopen and Delaware Seashores State Parks.

C. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk and Volusia Counties.

2. Those portions of Gadsden and Liberty Counties, adjacent to Leon County, that include the floodplains of Lake Talquin and the Ochlockonee River.

3. That portion of Lake Miccosukee in Jefferson County.

4. Orange Lake and Lochloosa Lake in Alachua County.

5. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.

6. That portion of Glades County outside of the area described in No. 5 above.

7. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of US Highway 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.

8. Lake Ponte Vedra in St. Johns County (all waters north of Guana Dam).

9. M-K Ranch public waterfowl area in Gulf County.

10. That portion of Everglades Conservation Area 2 in Palm Beach County.

11. That portion of Lake George lying in Putnam County.

12. That portion of the St. Johns River floodplain lying in Lake, Seminole and Orange Counties.

13. That portion of Lake Rousseau lying in Levy and Marion Counties.

14. Lake Harbor public waterfowl hunting area in Palm Beach County.

15. Chassahowitzka Wildlife Management Area in Hernando County.

16. Chassahowitzka, Lower Suwannee and Loxahatchee National Wildlife Refuges.

Georgia

1. Eufaula and Savannah National Wildlife Refuges.

Maine

All lands and waters within the State of Maine have been designated for nontoxic shot use.

Maryland

1. Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, and Worcester Counties.

Massachusetts

1. Barnstable, Dukes, Essex, Nantucket and Plymouth Counties.

New Jersey

1. Atlantic, Cape May, Cumberland, Hudson, Middlesex, Monmouth, Ocean and Salem Counties.

2. Burlington County, that portion lying to the south and east of the New Jersey Transit Railroad tracks that run from Atsion to Woodmansie.

New York

All lands and waters within the State of New York have been designated for nontoxic shot use.

North Carolina

1. Beaufort, Currituck, Pamlico and Washington Counties.

2. Cape Hatteras National Seashore Recreation Area.

3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

Pennsylvania

All lands and waters within the State of Pennsylvania have been designated for nontoxic shot use.

Rhode Island

All lands and waters within the State of Rhode Island have been designated for nontoxic shot use.

South Carolina

1. Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter and Williamsburg Counties

Vermont

1. Franklin and Grand Isle Counties.

2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Accomack, Charles City, Gloucester, James City, New Kent and York.

2. Cities of Chesapeake, Hampton, Newport News, Norfold, Suffolk and Virginia Beach.

Mississippi Flyway

Alabama

1. Limestone County

2. Eufaula National Wildlife Refuge.

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crittenden, Cross, Desha, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Monroe, Phillips, Poinsett, Prairie, Pulaski and Woodruff Counties.

2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.

3. Felsenthal National Wildlife Refuge.

Illinois

1. Alexander, Bond, Calhoun, Clinton, Fayette, Jackson, Jefferson, Jersey, Kane, Lake, McHenry, Union and Williamson Counties.

2. Carroll County, that portion east of IL-84.

3. Cass County, that portion east and/or south of IL-78, Federal-Aid Secondary Route 577 and IL-100.

4. Franklin County, that portion of Rend Lake and related subimpoundments, and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

5. Greene County, that portion south of IL-108, west of Federal-Aid Primary Route 155 and north of the Jersey County line.

6. Henderson County, that portion east and/or south of Federal-Aid Secondary Route 216, IL-164, Federal-Aid Secondary Route 418 and IL-96.

7. Mason County, that portion east and/or south of Federal-Aid Secondary Route 461, US 136 and IL-78.

8. Putnam County, those portions west of IL-29 and east and/or south of IL-89, IL-71 and IL-26.

9. That portion of the Mississippi River and adjacent areas as bordered on the north by the Wisconsin State line and bordered on the east and south by IL-35 from the Wisconsin State line southwest to East Dubuque, US-20 from East Dubuque southeast to IL-84, IL-84 south to IL-136 near Fulton, Federal-Aid Secondary Route 1193 (Chase Road and Sand Road) south to IL-5, IL-5 southwest to I-80, I-80 south to I-280 west to IL-92, and IL-92 west to the bridge over the Mississippi River.

10. That portion of the Mississippi River and adjacent areas as bordered on the north by the railroad bridge at Keithsburg and bordered on the east and south by Federal-Aid Secondary Route 216 from Keithsburg south to IL-164, IL-164 west to Oquawka and south to US-34, US-34 southwest to Federal-Aid Secondary Route 418 south through Carman to Lomax, IL-96 from Lomax southwest to Niota then southward through Nauvoo and Hamilton to Lima. Federal-Aid Secondary Route 2597 from Lima west to County Highway 7, County Highway 7 south to County Highway 8 and County Highway 8 west to Meyer to Lock and Dam 20.

11. That portion of the Mississippi River and adjacent areas in Pike County as bordered on the north by US-36 and bordered on the east (or inland) by IL-96.

12. That portion of the Illinois River and adjacent areas as bordered on the north and west by IL-29 from Spring Valley west to DePue and south to Peoria, US-24 from Peoria southwest to Fulton County, all of Fulton County, IL-100 from Fulton County southwest to US-67, IL-103 from US-67 west to Sugar Grove, Federal-Aid Secondary Route 582 from Sugar Grove south through LaGrange to IL-99, and IL-99 southeast to Meredonsia, and bordered on the east and south by IL-89 from Spring Valley south to IL-71, IL-71 west to IL-26, IL-26 south to East Peoria (except including all of Marshall and Woodford Counties), IL-29 from East Peoria south to Powerton, Federal-Aid Secondary Route 461 from Powerton west and south through Manito and Forest City to US-136, US-136 west to Havana, IL-78 from Havana south to Chandlerville, Federal-Aid Secondary Route 577 from Chandlerville west to Beardstown, IL-100 from Beardstown south to IL-104, and IL-104 west to Meredosia.

13. Adams County, the Bear Creek Unit of Mark Twain National Wildlife Refuge.

14. Upper Mississippi River Wild Life and Fish Refuge.

Indiana

All lands and waters within the State of Indiana have been designaed for nontoxic shot use.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Western Zone—That area west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, and running northeast along the Purchase Parkway to Interstate 24, east to U.S. Highway 641, north to U.S. Highway 60, north to U.S. Highway 41, then north to the Kentucky-Indiana border near Henderson, Kentucky.

Louisiana

1. Acadia, Assumption, Avoyelles, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Evangeline, Iberia, Jefferson, Jefferson Davis, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Rapides, Red River, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Terrebonne and Vermilion Parishes.

2. Bogue Chitto, D'Arbonne and Upper Ouachita National Wildlife Refuges.

Michigan

1. Eastern Upper Peninsula. A. The water and land areas of Chippewa County within the following described boundary: Starting at the SW corner of Sec. 33, T44N, R1E on a line extending north 4 miles along the west side of Secs. 33, 29, 21, and 16 to the NW corner of Sec. 16, T44N, R1E; then east 1½ miles to the S quarter corner of Sec. 10, T44N, R1E; then north 1 mile to the N quarter corner of Sec. 10, T44N, R1E; then east ½ mile to the SW corner of Sec. 2, T44N, R1E; then north 1 mile to the NW corner of Sec. 2, T44N, R1E; then east along the north section lines of Secs. 1 and 2, T44N, R1E and Secs. 4, 5, and 6, T44N, R2E, to the NE meander corner of Sec. 4, T44N, R2E; then on a line southerly across Munuseong Lake to the NE meander corner of Sec. 28, T44N, R2E; then south on the E section lines of Secs. 28 and 33, T44N, R2E to the SE corner of Sec. 33, T44N, R2E; then west 7 miles along the south section line of Sec. 33, 32, and 31, T44N, R2E, and Secs. 36, 35, 34, and 33, T44N, R1E, to the point of beginning.

B. The waters of Potagannissing Wildlife Flooding on Drummond Island.

2. Saginaw Bay. All water and land areas of Arenac, Bay, Tuscola, Huron and Saginaw Counties, including all portions of Saginaw Bay and those portions of Lake Huron south of a line directly east from the north boundary of Arenac County to the Ontario border, and north of a line directly east of the south boundary of Huron County to the Ontario border. All county boundary waters and lakes partially within the steel shot zones are totally included.

3. Central Michigan. All water and land areas of Roscommon County and that area of water and land encompassing the controlled level impoundments (wetlands wildlife management units) of the Maple River State Game Area adjacent to US–27 in Gratiot County, as posted.

4. Southeastern Michigan.

A. All waters and land areas of Macomb, Monroe, St. Clair and Wayne Counties, including the U.S. waters of the St. Clair River, Lake St. Clair, the Detroit River, and Lake Erie, and that portion of Lake Huron south of a line directly east from the north boundary of St. Clair County to the Ontario boundary. All county boundary waters and lakes partially within the steel zone are totally included.

B. That area of Jackson County (north of I–94 and east of M–106); Ingham County (east of M–106/M–52 and south of m–36); Livingston County (south of M–36, east of M–155 and south of M–59); Oakland County (south of M–59, west of US–24 [Telegraph Road], north of I–95 and west of I–275; and Washtenaw County (north of M–14 and I–94).

C. On all waters and lands within the posted boundaries of the U.S. Fish and Wildlife Service Schlee Waterfowl Production Area located in Section 6, T3S R2E of Grass Lake Township, Jackson County.

5. That area of water and land encompassing Allegan, Barry, Muskegon, Ottawa and Kalamazoo Counties, including the waters of Lake Michigan lakeward from any of these counties to the border with Wisconsin. All county boundary waters and lakes partially within the steel zones are totally included.

Minnesota

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

Mississippi

All lands within the State of Mississippi have been designated for nontoxic shot use.

Missouri

All lands and waters within the State of Missouri have been designated for nontoxic shot use.

Ohio

1. Ashtabula, Cuyahoga, Erie, Holmes, Lake, Lorain, Lucas, Ottawa, Sandusky, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Dyer, Jefferson, Lake, Obion, Shelby and Tipton Counties.

2. Cross Creeks, Hatchie and Lower Hatchie National Wildlife Refuges.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Alamosa, Boulder, Conejos, Costilla, Morgan, Rio Grande and Weld Counties.

2. Hinsdale, Mineral and Saguache Counties east of the Continental Divide.

3. Turk's Pond portion of Baca County.

Kansas

1. Barton, Coffey, Cowley, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Montgomery, Neosho and Stafford Counties.

2. All areas administered by the Kansas Fish and Game Commission, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above Counties.

3. Kirwin Reservoir.

4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

Montana

All land and waters within the State of Montana have been designated for nontoxic shot use.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

1. Colfax County.

2. That area bounded by a line beginning at the northeast corner of the Bosque del Apache National Wildlife Refuge (BNWR) boundary and running east to the road joining the White Sands Missile Range Military Reservation Extension Co-Use (WSMRMREC) boundary from the northwest, thence southeast along the road to its junction with the WSMRMREC boundary, thence north, east, and west along the WSMRMREC boundary to its junction with the Sevilleta National Wildlife Refuge (SNWR), thence north and east along the boundary of the SNWR to its intersection with US Highway 60, thence west along US Highway 60 to its junction with State Highway 47, thence north along State Highway 47 to its intersection with the Isleta Indian Reservation, thence west and south along the southern boundary of the Isleta Indian Reservation to its intersection with Interstate Highway 25, thence south along Interstate Highway 25 to its junction with the SNWR boundary, thence following the SNWR boundary west, north, then south and east to Interstate Highway 25, thence south along Interstate Highway 25 to its junction with BNWR boundary and following the BNWR boundary west, southwest, southeast, east, and northeast to the northeast corner of BNWR. This zone includes Belen, Bernardo and La Joya State Game Refuges.

3. That area bounded by a line starting at the junction of State Highway 3 and State Highway 21 and running northeast along State Highway 21 to its junction with Coyote Creek; thence southeast along Coyote Creek to its junction with the Mora River; thence westerly along the Mora River to its junction with State Highway 161; thence north and west along State Highway 161 to its intersection with State Highway 3 and north on State Highway 3 to its junction with State Highway 21.

4. The Lower Pecos River Valley, as bounded on the north by US 380, on the west by US 285, on the south by the Texas-New Mexico border, and on the east by the Lea County line. This area includes the William S. Huey Waterfowl Area, formerly known as the Artesia State Waterfowl Management Area.

5. Charette Lake State Waterfowl Management Area in Mora County.

6. McAllister and Salt Lake State Game Refuges.

7. Jicarilla Apache Indian Reservation lands in Rio Arriba and Sandoval Counties.

8. Navajo Indian Reservation lands in Bernalillo, Cibola, McKinley and Socorro Counties.

8. Bitter Lake and Las Vegas National Wildlife Refuges.

North Dakota

1. Bottineau, Griggs, McIntosh, Nelson, Ramsey, Sargent and Towner Counties.

Oklahoma

1. Nowata County.

2. US Highway 77 from the Kansas border south to US Highway 177, US Highway 177 south to State Highway 15, State Highway 15 east to State Highway 18, State Highway 18 south to US Highway 64, US Highway 64 east to State Highway 99, State Highway 99 south to State Highway 51, State Highway 51 east to State Highway 97, State Highway 97 north to its junction with unnamed county roadway, northwestwardly on the county roadway to its junction with State Highway 20, State Highway 20 west to State Highway 18, State Highway 18 north to the Kansas border.

3. Interstate 40 from the Arkansas border west to State Highway 82, State Highway 82 north to State Highway 100, State Highway 100 west to State Highway 10A, State Highway 10A west to State Highway 10, State Highway 10 north to State Highway 80, State Highway 80 north to State Highway 251A, State Highway 251A southwest to Muskogee Turnpike, Muskogee Turnpike south to Interstate 40, Interstate 40 west to US Highway 69, US Highway 69 north to US Highway 266, US Highway 266 west to US Highway 62, US Highway 62 south to Indian Nation Turnpike, Indian Nation Turnpike south to US Highway 270, US Highway 270 east to State Highway 2, State Highway 2 north to State Highway 31, State Highway 31 west to State Highway 71, State Highway 71 north to State Highway 9, State Highway 9 to State Highway 9A, and State Highway 9A north and east to the Arkansas border.

4. State Highway 78 from the Texas border north and west to US Highway 75, US Highway 75 north to State Highway 78, State Highway 78 west to State Highway 22, State Highway 22 north and west to its junction with State Highway 12 at Ravia, south and west on State Highway 12 to State Highway 199 to State Highway 99C near Oakland, south and west on State Highway 99C and State Highway 32 to the junction of Interstate Highway 35 near Marietta, south down Interstate Highway 35 to the Texas border.

5. That portion of Oologah Reservoir and all adjoining public lands in Rogers County.

6. Fort Cobb Reservoir and all adjoining public lands.

7. Hajek Marsh.

8. Those areas of land and water encompassing the controlled water level impoundments (WATERFOWL STAMP HUNTING AREAS) within the following State Wildlife Management Areas:

A. Waurika
B. Texoma-Washita Arm
C. Hulah
D. Wister
E. Okmulgee
F. Chouteau
G. Copan
H. Hugo
I. Mt. Park

9. Washita National Wildlife, Refuge.

South Dakota

1. In the following areas, nontoxic shot must be used by all hunters:

A. Aurora, Bon Humme, Hamlin, Kingsbury, Marshall and Roberts Counties.

B. That portion of Hughes County lying west and north of US Highway 83, and lying south of US Highway 14.

C. That portion of Stanley County lying east and north of the Lower Brule-Antelope Creek Road from the Lyman-Stanley County line to Fort Pierre, and that portion of Stanley County lying north of State Highway 34 for approximately five miles west of Fort Pierre and east of Stanley County Federal-Aid Secondary Highway 6193 and State Highway 1806 to Minneconjou Bay.

D. On or within 100 yards of the water's edge of Lake Andes in Charles Mix County.

E. Those portions of Charles Mix and Gregory Counties lying on or within 100 yards of the water's edge of the Missouri River, from Fort Randall Dam downstream to the Bon Homme-Charles Mix County line.

2. In all other counties, and in the remaining portions of those counties not covered by item 1 above, nontoxic shot must be used by all hunters expect those under 16 years of age using 28 gauge or .410 caliber shotguns, and those using muzzleloading shotguns.

Texas

1. Those portions of Colorado, Harris, Jefferson, Liberty and Waller Counties north of IH–10.

2. Neuces County, that portion west of US Highway 77.

3. That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of US Highway 90 and IH 10 in Beaumont, thence westward along US 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with US Highway 290 in Houston, thence westward along US Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with Farm-to-Market (FM) 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with US Highway 77 at Schulenburg, thence southward along US Highway 77 to its junction with the US-Mexico international boundary at Brownsville, thence eastward along the US-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10.

4. The portions of Grayson, Fannin and Cooke Counties lying within boundaries beginning at the Oklahoma State line, thence southward along I–35 to its junction with US Highway 82 at Gainesville, thence eastward along US Highway 82 to its junction with US Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I–35.

5. The portions of Upshur, Cass, Harrison, Morris and Marion Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with US Highway 259 at Daingerfield, thence southward along US Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with US Highway 80 at Marshall, thence eastward along US Highway 80 to its junction with State Highway 43, thence northeastward along State Highway 43 to its junction with FM 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its junction with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49.

6. The portions of Henderson, Kaufman and Anderson Counties lying within boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with US Highway 175 at Athens, thence northwestward along US Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with US Highway 175 at Kemp, thence southward along US Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with US Highway 287 at Cayuga, thence southeastward along US Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with US Highway 175 at Frankston, thence eastward along US Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the water line of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River,

beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where US Highway 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then northerly along said highway to US Highway 85; northerly along said highway to Wyoming Highway 156; westerly and northerly along said highway to Goshen County Road No. 7–62; westerly along said road to the Fort Laramie Canal River; northwesterly along said road to Goshen County Road No. 7–48; southwesterly along said road to the Goshen-Platte County line; north along said line to US Highway 26; southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; North along said road to Goshen County Road No. 7–114; east along said road to Wyoming Highway 92; east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Hopi Indian Reservation lands in Coconino and Navajo Counties.

3. Navajo Indian Reservation lands in Apahce, Coconino and Navajo Counties.

4. Cibola National Wildlife Refuge.

California

1. Alameda, Butte, Colusa, Contra Costa, Glenn, Imperial, Marin, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Plumas, Shasta, Sierra, Siskiyou and Tehama Counties, and all of Lassen and Modoc Counties, bounded by the following line: Beginning at I–5 at the Oregon border, southerly on I–5 to State Highway 89, thence southeasterly on State Highway 70, thence easterly on State Highway 70 to US 395, thence southerly on US 395 to the Nevada border.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.

2. Southwestern Zone. Canyon and Payette Counties north and east of I–84, and those portions of Ada, Canyon, Elmore, Owyhee and Payette Counties within the following boundary: Beginning at the intersection of I–84 Business Highway junction at Cold Springs Creek east of Hammett, then northwest on I–84 to the Idaho-Oregon State line, then south along the Idaho-Oregon State line to State Highway 19, then east on State Highway 19 to US-95 near Homedale, then south and east on US-95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I-84 Business Highway at Hammett, then east on I–84 Business Highway to I–84 at Cold Springs Creek, the point of beginning.

3. South Central Zone. All of Gooding County, and that portion of Twin Falls County that is west of the Gooding County-Jerome County-Twin Falls County junction and within 600 feet of the high water line of the Snake River.

4. Southeastern Zone. All lands within the Fort Hall Indian Reservation boundary; all of Jefferson County; and those portions of Bannock, Bingham, Bonneville, Caribou, Cassia, Madison and Power Counties within the following boundary: Beginning at the Interstate 15-Jefferson County intersection (north of Idaho Falls), then south and southwest on I–15 to State Highway 39 near Blackfoot, then southwest on State Highway 39 to the road to the Idaho Department of Fish and Game's American Falls Fish Hatchery (approximately one-quarter mile west of American Falls Dam), then south on the hatchery road to the Union Pacific Railroad tracks, then southwest on the Union Pacific Railroad tracks to the Blaine County line, then south on the Blaine County line to its junction with the Cassia County line, then west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to I–15, then north on I–15 to US-91 (Old Yellowstone Highway) near Blackfoot, then northeast on US-91 to its junction with State Highway 26 approximately five miles northeast of Shelly, then northeast on US-26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on the Heise-Archer-Lyman Road to US 191/20, then north on US 191/20 to the US 191/20-Jefferson County line, and then west on the southern boundary of Jefferson County to the point of beginning.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nevada

1. Canvasback Gun Club in Churchill County.

2. Carson Lake (Greenhead Hunting Club) in Churchill County.

3. Humboldt Wildlife Management Area in Churchill and Pershing Counties.

4. Key Pittman Wildlife Management Area in Lincoln County.

5. Mason Valley Wildlife Management Area in Lyon County.

6. Overton Wildlife Management Area in Clark County.

7. Stillwater Wildlife Management Area in Churchill County.

8. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties and Pahranagat National Wildlife Refuge in Lincoln County.

New Mexico

1. San Juan County.

2. Navajo Indian Reservation lands in Cibola, McKinley and San Juan Counties.

3. Jicarilla Apache Indian Reservation lands in Rio Arriba and Sandoval Counties.

Oregon

1. Marion, Polk, Washington and Yamhill Counties.

2. Columbia County, that portion south and west of US 30.

3. Multnomah County, that portion south of I–84.

4. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.

5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, westerly on Highway I–84 to Portland, thence northwesterly on US 30 to the Astoria bridge, thence partially across Astoria bridge to the Oregon-Washington State line, thence upriver on the Washington-Oregon State line to point of origin.

6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, thence northwesterly on I–84 to State Highway 201, thence southerly on State Highway 201 to State Highway 19, thence easterly on State Highway 19 to the Oregon-Idaho State line and back to the point of origin.

7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, thence easterly on I–84 to US–730 thence northeasterly on US–730 to the Oregon-Washington State border, thence westerly along the Columbia River, Oregon-Washington border to point of origin.

Utah

1. Cache, Davis, Salt Lake, Utah and Weber Counties.

2. That portion of Box Elder County lying east of a line extending from 80N at the Utah-Idaho border, thence southeast on 80N to the junction of the Snowville-Locomotive Springs Road, thence southwest on the Snowville-Locomotive Springs Road to the junction of the Kelton Road, thence west on Kelton Road to the town of Kelton, thence south to the north shore of the Great Salt Lake, thence south along the west shore of the Great Salt Lake to the Box Elder County line.

3. Navajo Indian Reservation lands in San Juan County.

Washington

1. All of Walla Walla County; that portion of Clallam and Thurston Counties not included in the Puget Sound Zone; and that portion of Pacific County not included in the Southwestern Zone.

2. Clark County, that portion north and/or east of State Highway 14 and I–5.

3. Franklin County, that portion east of State Highway 17.

4. Grant County, that portion east and/or south of State Highway 17 and US–2.

5. Skagit County, that portion east of I–5.

6. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, westerly on State Highway 14 to Vancouver, thence northerly on I–5 to Kelso, thence westerly on State Highway 4 to US 101, thence northerly on US 101 to Aberdeen, thence westerly on State Highway 109 to Ocean City, thence due west to the Pacific Ocean.

7. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, thence west, southerly and westerly along said border to a point due north of Neah Bay, thence due south to Neah Bay, thence easterly on State Highway 112 to US–101, thence easterly and southerly on US–101 to I–5, thence northerly on I–5 to State Highway 538 near Mt. Vernon, thence easterly on State Highway 538 to State Highway 9, thence northerly on State Highway 9 to State Highway 20, thence westerly on State Highway 20 to I–5, thence northerly on I–5 to point of origin.

8. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US–97, thence northerly on US–97 to State Highway 14, thence easterly on State Highway 14 to US–395/I–82, thence northerly on US–395/I–82 (formerly a continuation of State Highway 14) to Kennewick, thence westerly on State Highway 240, thence northerly on State Highway 240 to State Highway 24, thence westerly on State Highway 24 to US–97, thence northerly on US–97 to State Highway 155 at Omak, thence easterly and southerly on State Highway 155 to State Highway 174 at Grand Coulee, thence southeasterly on State Highway 174 to US–2, thence westerly on US–2 to State Highway 17, tence southerly on State Highway 17 to US–395, thence southerly on US–395 to US–12, thence southerly on US–12 and US–730 to the Oregon border (including the entire McNary National Wildlife Refuge), thence westerly along the Columbia River and the Washington-Oregon border to the point of origin.

PART 21—[AMENDED]

1. The authority citation for Part 21 would continue to read follows:

Authority: Migratory Bird Treaty Act, sec. 3. Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 21.13(d) is proposed to be amended by revising the last proviso to read as follows (The introductory paragraph is being republished.):

§ 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported and disposed of by any person without a permit subject to the following conditions, restrictions and requirements:

* * * * *

(d) * * * *Provided further,* That the provisions of the hunting regulations (Part 20 of this subchapter), with the exception of § 20.108 (Nontoxic shot zone) and the Migratory Bird Hunting Stamp (duck stamp requirement), shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

* * * * *

Date: November 17, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–28419 Filed 12–11–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 239
Monday, December 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration
Title: Special Adjustment Assistance Application
Form Number: Agency—ED-540; OMB—0610-0058
Type of Request: Revision of a currently approved collection
Burden: 75 respondents; 406 reporting hours
Needs and Uses: The collected information is necessary to determine the fulfillment of legal and programmatic requirements by those seeking assistance under the Title IX program of the Public Works and Economic Development Act of 1965, as amended, and as contained in 13 CFR 308.2 through 308.6.
Affected Public: State or local governments
Frequency: On occasion
Respondent's Obligation: To obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-28565 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Post Enumeration Survey Questionnaire—1988 Census
Form Number: Agency—DX-1300; OMB—NA
Type of Request: New
Burden: 11,000 respondents; 2,750 reporting hours
Needs and Uses: This collection is necessary to rehearse the Post Enumeration Survey activities for the 1990 Census. Collected information will be used to measure census coverage in the 1988 Census.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-28566 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 366]

Resolution and Order Approving the Application of the State of New Jersey Department of Commerce and Economic Development for Subzones for International Flavors and Fragrances, Inc., in Northern New Jersey

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Department of Commerce and Economic Development of the State of New Jersey, grantee of FTZ 44, filed with the Foreign-Trade Zones Board (the Board) on November 27, 1984, requesting special-purpose subzone status for the manufacturing plants of International Flavors and Fragrances, Inc. (IFF), located in Hazlet, Union Beach, and South Brunswick, New Jersey, adjacent to the New York Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for five years subject to the following conditions:

1. Authority for the subzones may be extended after a review by the Board;

2. Foreign merchandise admitted into the subzones shall be monitored annually to ensure that zone procedures do not cause increased imports; and,

3. IFF shall provide the FTZ Board and the District Director of Customs annually with a list of merchandise admitted to the subzones in nonprivileged foreign status.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones in Hazlet, Union Beach and South Brunswick, NJ

Whereas, by an Act of Congress approves June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Department of Commerce and Economic Development of the State of New Jersey, grantee of Foreign-Trade Zone No. 44, has made application (filed November 27, 1984, Docket No. 52–84, 49 FR 47518) in due and proper form to the Board for authority to establish special-purpose subzones for plants of International Flavors and Fragrances, Inc., located in Hazlet, Union Beach, and South Brunswick, New Jersey, adjacent to the New York Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied, provided approval is subject to certain conditions;

Now, Therefore, in accordance with the application filed November 27, 1984, the Board hereby authorizes the establishment of subzones at the plants of International Flavors and Fragrances, designated on the records of the Board as Foreign-Trade Subzones Nos. 44B, 44C, and 44D, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder to the same extent as though the same were fully set forth herein, and the special conditions enumerated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 1st day of December, 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–28569 Filed 12–11–87; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 40–87]

Foreign-Trade Zone 66—Wilmington, NC; Application for Subzone Carolmet, Inc., Optical Lens Blank Operation, Scotland County, NC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Commerce of the State of North Carolina, grantee of FTZ 66, requesting special-purpose subzone status for the germanium lens blank manufacturing operation of Carolmet, Inc. (Carolmet), a subsidiary of Metallurgie Hoboken-Overpelt, S.A., of Belgium (MHO), located in Scotland County, North Carolina.

The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 1, 1987.

The proposed subzone would involve an 8-acre site within Carolmet's 67-acre facility located on Airport Road, ½ mile north of the Laurinburg-Maxton Airport in Scotland County, North Carolina. Carolmet's proposed operation in a new 30,000-sq. ft. plant would employ 25 persons to produce optical-grade germanium lens blanks used in night-vision equipment. The primary raw material, germanium ingots, would be supplied by MHO's facility in Belgium. Carolmet's U.S. production would replace lens blanks imported from Belgium, most of which enter the United States duty-free based on their end-use (sales to DOD).

In its DOD sales, zone procedures would allow Carolmet to elect the same duty-free treatment on germanium ingots that applies to completed germanium blanks procured under DOD regulations. On non-DOD sales, the company would pay duties at the rate applicable to ingots (2.7 percent). The applicant has indicated that the savings from zone procedures will encourage the shifting of its night-vision lens manufacturing from overseas.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 Brickell Pl., Rm 7322, Miami, FL 33130; and Colonel Paul W. Woodbury, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington NC 28402.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 25, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, District Director's Office, 1 Virginia Ave., Wilmington, NC 28401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: December 7, 1987.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 87-28570 Filed 12-11-87; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 41-87; Foreign-Trade Zone 41]

Application for Subzone Square D Company Industrial Computer and Controller Equipment Plant, Milwaukee, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting special-purpose subzone status for the industrial computer and controller equipment manufacturing plant of Square D Company in Milwaukee, Wisconsin, within the Milwaukee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 4, 1987.

The plant (18 acres) is located at East Capitol Drive and North Richards Street, Milwaukee. The facility employs 600 persons and is used to assemble industrial computer equipment used by the auto industry, such as SY/MAX microprocessor-based control systems, communication processors, stamping press controls and welder controls. Some 30 percent of the components (by value) are sourced abroad, including circuit boards, power supplies, monitors disc drives, printers, coils, semiconductors, capacitors, resistors, switches and other electronic components.

Zone procedures would exempt Square D from Customs duty payments on the foreign components used in its exports. On its domestic sales, the company would be able to pay duties at the rate applicable to complete equipment. The duty rates on the industrial computers range from 2.0 to 5.3 percent, whereas the duty rates on the components range from 0.0 to 10.0 percent. The applicant indicates that zone procedures will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Rudin, District Director, U.S. Customs Service, North Central Region, 517 East Wisconsin Avenue, Room 554, Milwaukee, Wisconsin 53202; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 25, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Building, U.S. Courthouse, 517 East Courthouse Avenue, Milwaukee, Wisconsin 53202
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230

Dated: December 8, 1987.
John J. DaPonte Jr.
Executive Secretary.
[FR Doc. 87-28642 Filed 12-11-87; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Amendment to Notice of Proposed Conversion of Tariff Schedules of the United States Classifications to the Harmonized System of Tariff Classifications

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Amendment to notice of proposed conversion of tariff schedules of the United States classifications to the Harmonized System of tariff classifications.

SUMMARY: On August 21, 1987, the Department of Commerce published a notice of proposed conversion of Tariff Schedules of the United States classifications to the Harmonized System of tariff classifications for active antidumping and countervailing duty proceedings. The Department is now giving notice of proposed harmonized system numbers for cases involving textile products and wearing apparel made from textile products. A correlation of these numbers was not available at that time. We invite interested parties to comment on these textile classification designations.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Craig Johnke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 277-2786.

Proposed Use of Harmonized System of Tariff Classification

On August 21, 1987, the Department of Commerce published in the **Federal Register** a notice of "Proposed Conversion of Tariff Schedules of the United States Classifications to the Harmonized System of Tariff Classifications" (52 FR 31657).

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to use of the Harmonized System by January 1, 1988. In view of this, the Department of Commerce prepared a listing of *Tariff Schedules of the United States* item numbers and appropriate Harmonized System item numbers for active antidumping and countervailing duty proceedings. That listing did not include the proposed Harmonized System numbers for proceedings involving textile products and wearing apparel made from textile products because those numbers were not available at that time.

The countervailing duty proceedings for which the Harmonized System numbers are now available are as follows:

Argentina—Woolen Garments (C-357-048)
Argentina—Textiles and Apparel (C-357-404)
Mexico—Textiles Mill Products (C-201-405)
Peru—Cotton Sheeting and Sateen (C-333-001)
Peru—Textiles and Apparel (C-333-402)
Sri Lanka—Textiles and Apparel (C-542-401)
Thailand—Apparel (C-549-401)

We invite interested parties to review and comment on these Harmonized System designations which are now available at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. All comments must be in writing, addressed to the attention of the Office of Compliance, at the above address and must be received within two weeks after the date of publication of this notice.

A reference copy of the proposed Harmonized System Tariff Schedule is

available for consultation at the Central Records Unit. Additionally, all U.S. Customs offices have reference copies, and interested parties may contact the Import Specialist at their local Customs office to consult the schedule.

Joseph Spetrini,

Acting Assistant Secretary, Import Administration.

Date: December 7, 1987.

[FR Doc. 87-28641 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-274-001]

Carbon Steel Wire Rod From Trinidad and Tobago, Final Results of Changed Circumstances; Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration; Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances, administrative review and revocation of antidumping duty order.

SUMMARY: Because of changed circumstances, we are revoking the antidumping duty order on carbon steel wire rod from Trinidad and Tobago. The revocation applies to all entries of carbon steel wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 37996) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping duty order on carbon steel wire rod from Trinidad and Tobago (48 FR 52112, November 16, 1983). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod, currently classifiable under TSUSA item 607.1700 and under HS item numbers 7213.3900, 7213.4900, and 7213.5000.

The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The final results are unchanged from the preliminary results.

As a result of our review, we determine that petitioners' affirmative statements of no interest in continuation of the antidumping duty order on carbon steel wire rod from Trinidad and Tobago provide a reasonable basis for revocation of the order.

Therefore, we are revoking the order on carbon steel wire rod from Trinidad and Tobago effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.53 and 353.54.

Dated: November 24, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87-28568 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Center Program Applications; West Palm Beach, FL

December 8, 1987.

AGENCY: Minority business Development Agency, Commerce.

ACTION: Notice.

This advertisement is to extend the West Palm Beach, Florida MBDC competitive solicitation. The new closing date is December 30, 1987. All other terms and conditions remain the same as when the advertisement appeared on October 30, 1987.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *04/01/88* to *03-31-89*. The MBDC will operate in the *West Palm Beach, Florida* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04-10-88007-01* for the *West Palm Beach, Florida* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and State governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *December 30, 1987.* Applications must be postmarked on or before *December 30, 1987.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta Georgia 30309, (404) 347-3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address: 11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 8, 1987.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 87-28576 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research Reserves; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the American Samoa, California and Virgin Islands Coastal Management Programs and the Maryland California (Tijuana), Georgia and Puerto Rico National Estuarine Research Reserves. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each Reserve with respect to its operation and management. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(a) (A)-(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104).

Dated: December 7, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-28604 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-08-M

Intent To Evaluate Performance; Puerto Rico Coastal Management Program et al.

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Puerto Rico Coastal Management Program (CMP); American Samoa CMP; Guam CMP; Northern Marianas CMP; Louisiana CMP; and Virgin Islands CMP; through March 30, 1988. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state was implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contract listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104).

Date: December 7, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-28605 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-08-M

Endangered Species; Issuance of Permit; Georgia Department of Natural Resources (P403)

On September 22, 1987, notice was published in the **Federal Register** (52 FR 35564) that an application had been filed by the Georgia Department of Natural Resources, Coastal Resources Division, 1200 Glynn Avenue, Brunswick, Georgia 31523-9990, for a permit to take sea turtles and shortnose sturgeon for scientific research.

Notice is hereby given that on December 4, 1987, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW. Rm. 805, Washington, DC and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger

Boulevard, St. Peterburg, Florida 33702.

Date: December 4, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 28616 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; National Marine Fisheries Service, Southwest Fisheries Center

On January 26, 1987, Notice was published in the **Federal Register** (52 FR 2753) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Center, P.O. Box 271, La Jolla, California 92038, for a permit to take Hawaiian monk seals *(Monachus schauinslandi)* for scientific research and to enhance the propagation and survival of the species.

Notice is hereby given that on December 4, 1987, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: December 4, 1987.

[FR Doc. 87-28617 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 8, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 8, 1987. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the import limit for cotton, silk blend and other vegetable fiber textiles and textile products in Categories 333/334/335/833/834/835, and sublevel Categories 333/335/833/835, produced or manufactured in Macau and exported during 1987.

Background

A CITA directive dated December 23, 1986 was published in the **Federal Register** (51 FR 47045), as amended on July 6, 1987 (52 FR 47045), announcing import restraint limits for certain categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 333/334/335/833/834/835, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended, between the Governments of the United States and Macau, the limit for Categories 333/334/335/833/834/835 and the sublevel for Categories 333/335/833/835 are being increased for carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

December 8, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1986, as amended on July 6, 1987, which directed you to prohibit entry of certain categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the designated restraint limits.

Effective on December 3, 1987, the directive of December 23, 1986, as amended, is amended further to adjust the limit for the following categories, according to the terms of the Bilateral Cotton, Wool Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended, between the Governments of the United States and Macau: [1]

Category	12-mo limit [1]
333/334/335/833/834/835.	155,940 dozen of which not more than 84,750 dozen shall be in Categories 333/335/833/835.

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-28564 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-DR-M

Continuation of Investigation of Export Licenses for Textiles and Textile Products Produced or Manufactured in the Peoples' Republic of China

The purpose of this notice is to notify the public that the investigation conducted by the Government of the United States and the People's Republic of China concerning the possibility of fraudulent export licenses covering shipments of textiles and textile products, produced or manufactured in the People's Republic of China and exported to the United States, will be continued into 1988 (see 52 FR 17313).

The U.S. Customs Service will conduct manual verifications at the ports of entry for shipments of textiles and textile products from China which are suspected to contain a fraudulent export license. Since this is a cumbersome procedure, shipments may be detained as much as three weeks.

Visa waivers and replacement visas will not be issued for shipments accompanied by counterfeit export licenses.

Anyone who wishes to verify the authenticity of his export license from China may call Mr. Du Baolai at the Embassy of the People's Republic of China in Washington at (202) 328-2527 or write to the Embassy of the People's Republic of China at 2300 Connecticut Avenue NW., Washington, DC 20008.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-28563 Filed 12-11-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DIA Defense Intelligence College Board of Visitors; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Vistors has been scheduled as follows:

DATES: Wednesday-Friday, 9-11 December 1987; 9:00 a.m. to 4:00 p.m. on 9-10 December; 9:00 to 11:00 a.m. on 11 December.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485. (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1987.

[FR Doc. 87-28608 Filed 12-11-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 13, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 9, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Library Services and Construction Act Financial, Performance and Completion Report for State Administered Programs Titles I, II, and III
Agency Form Number: ED 921-1, 921-2, 915-1
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 54, *Burden Hours:* 2160
Recordkeeping: Recordkeepers: 54, *Burden Hours:* 54

Abstract: These forms are used by State library administrative agencies that receive funds under the Library Services and Construction Act, as amended. The Department uses the information collected to assess the accomplishments of project goals and

objectives, and to aid in effective program management.

Type of Review: Extension
Title: Application for Special Projects Grants Under Library Services for Indian Tribes Program
Agency Form Number: G50–4P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 75, *Burden Hours:* 600
Recordkeeping: Recordkeepers: 0, *Burden Hours:* 0
Abstract: This form will be used by Federally recognized Indian tribes and Hawaiian natives to apply for funding under the Library Services and Construction Act, as amended. The Department uses the information collected to make grant awards.

Office of Civil Rights

Type of Review: Reinstatement
Title: Fall 1988 Elementary and Secondary School Civil Rights Survey
Agency Form Number: ED 101, 102
Frequency: Biennually
Affected Public: State and local governments
Reporting Burden: Responses: 39,100, *Burden Hours:* 273,700
Recordkeeping: Recordkeepers: 0, *Burden Hours:* 0
Abstract: This survey will collect data from school districts and individual schools for the purpose of determining possible noncompliance with civil rights laws. The Department uses the information to determine where and if compliance reviews should be conducted.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: State Performance Report (ECIA Chapter 1)
Agency Form Number: 686–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 54, *Burden Hours:* 21,870
Recordkeeping: Recordkeepers: 22,410, *Burden Hours:* 22,410
Abstract: This performance report is used by state and local educational agencies that have participated in the Chapter 1 Program of the Education Consolidation and Improvement Act, as amended. The Department uses the information collected to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Vocational and Adult Education

Type of Review: New
Title: Application for Adult Education for the Homeless Program
Agency Form Number: C30–3P
Frequency: Annually
Affected Public: State and local governments
Reporting Burden: Responses: 52, *Burden Hours:* 520
Recordkeeping: Recordkeepers: 0, *Burden Hours:* 0
Abstract: This form will be used by State educational agencies to apply for funds under the Stewart B. McKinney Homeless Assistance Act, as amended. The Department uses the information collected to make grant awards.

[FR Doc. 87–28680 Filed 12–11–87; 8:45 am]
BILLING CODE 4000–01–M

Office for Civil Rights; Final Annual Operating Plan for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Notice of final annual operating plan for fiscal year 1988.

SUMMARY: The Office for Civil Rights (OCR) issues its Fiscal Year (FY) 1988 Annual Operating Plan (AOP). The AOP describes the activities that OCR plans to conduct in FY 1988 with respect to compliance and enforcement, technical assistance, and program management.

FOR FURTHER INFORMATION CONTACT: Frederick G. Tate, (202) 732–1479.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Office for Civil Rights is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age in the delivery of services or the provision of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED-funded programs and activities carried out by 50 State educational and rehabilitation agencies, the District of Columbia, the U.S. territories and possessions, approximately 16,000 local educational agencies, and approximately 3,300 institutions of higher education, as well as certain subrecipients of the foregoing entities. In addition, OCR's civil rights authorities cover programs and activities in other institutions, such as libraries and museums, that receive ED funds.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: compliance activities and technical assistance activities. OCR's compliance activities with regard to complaint investigations and compliance reviews are subject to time frames imposed by a court order, *Adams* v. *Bennett (Adams)*, Civil Action No. 3095–70 (D.D.C. December 29, 1977, as modified January 17, 1985). However, OCR has discretion over the location and scope of its compliance reviews and monitoring activities. For the most part, OCR concentrates its compliance review activities on those recipients that have been identified as having possible compliance problems. OCR also provides technical assistance, including the transfer of information, materials, and skills, to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Technical assistance may be provided in the course of OCR's compliance activities to assist in achieving voluntary corrective action. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or through an offer of such assistance from investigative staff. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while ensuring that the rights of beneficiaries are protected.

During FY 1988, OCR will continue to use two operational techniques designed to improve the efficiency of the case-handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between an individual complainant and a recipient to negotiate a settlement between them. If mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During FY 1987, ECR was offered in 221 complaints (12 of the 221 offers were still pending as of September 30, 1987); attempted and completed in 122 complaints (1 of which had been initiated before the beginning of the fiscal year). Of the 122 cases in which ECR was completed, 70 percent were resolved successfully through mediation.

The second technique is pre-letter of findings (LOF) settlement. Under this process, OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review, in an attempt to reach a settlement before the issuance of the LOF. If settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in the violation corrected LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. When an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and, for each identified violation, either the remedy adopted by the recipient or the plan by which the recipient proposes to correct the violation. OCR then monitors the implementation of corrective action plans.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames established pursuant to the requirements of the *Adams* order.

OCR received 1,971 complaints and closed 2,197 (some of which had been filed before the beginning of the fiscal year) during FY 1987. OCR had 651 pending complaints as of September 30, 1987. Alleged discrimination against handicapped persons was the basis of approximately 54 percent of the complaints received; race, multiple bases, other[1], sex, national origin, and age complaints followed in descending order of frequency. During FY 1987, 65 percent of the complaints received involved elementary and secondary institutions, 26 percent involved postsecondary institutions, 2 percent involved vocational rehabilitation institutions, and 7 percent involved other institutions. During this same time period, 77 percent of the complaints received involved issues of service delivery to students, 18 percent involved various employment issues, 2 percent involved both, and 3 percent involved other issues.

[1] "Other" consists of complaints over which OCR does not have jurisdiction.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that, while some review activities are required by the *Adams* order, OCR has flexibility in selecting the location and scope of a review. Selction of review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public. Compliance reviews permit OCR to target resources on problems that appear to be serious or national in scope and that may not have been raised by complaints.

During FY 1987, OCR initiated 239 compliance reviews and closed 276 reviews, some of which had been initiated before the end of FY 1986. OCR had 80 open compliance reviews as of September 30, 1987. OCR plans to conduct an appropriate number of compliance reviews during FY 1988 to ensure proper enforcement of the civil rights laws.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete corrective action at a future date. To ensure that agreements to complete such corrective actions are carried out, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws and, in some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated corrective action plan. OCR monitors higher education desegregation plans and vocational education Methods of Administration. In FY 1988, OCR will monitor various activities including the following:

- Implementation by recipient institutions of corrective action plans resulting from OCR complaint investigations and compliance reviews;
- Implementation of *Adams* higher education desegregation plans;
- Review and implementation of corrective action plans to provide educational opportunities to national origin minority students who are limited-English-proficient (i.e., Title VI Lau plans); and
- Activities of recipients conducting vocational education programs to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of the means to meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1987, in addition to responding to requests for technical assistance, OCR regional offices were encouraged to provide technical assistance outreach efforts based on existing staff resources and ongoing assessments of recipient and beneficiary needs.

In FY 1988, OCR will conduct various technical assistance activities including the following:

- Actions to implement Memoranda of Understanding with State and local educational and human rights agencies to facilitate meeting mutual civil rights compliance objectives and to promote the sharing of information;
- Coordination with other ED program offices on the provision of civil rights-related technical assistance;
- Exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff providing technical assistance;
- Provision of materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to educational institutions and State and local governments;
- Provision of training to State and local educational agencies to enhance their capabilities to carry out civil rights activities; and
- Preparation of materials for dissemination to recipients and beneficiaries, summarizing and explaining the civil rights statutes enforced by OCR and OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes:

- Formulating or updating regulations, policies, and investigative manuals;
- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Participating in hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with Congressional staffs, U.S. Department of Justice attorneys, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;
- Conducting and analyzing OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance and technical assistance activities;
- Conducting a quality assurance program to ensure that a high level of quality is maintained in OCR compliance activities; and
- Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring corretive action plans, and providing technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination. During FY 1988, each regional office will conduct compliance reviews, in the geographic areas it serves, under each of the civil rights statutes enforced by OCR. Monitoring activities will focus on ensuring that recipients comply with corrective action plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Comments and Responses on the Proposed AOP for FY 1988

The proposed FY 1988 Annual Operating Plan for the Office for Civil Rights was published in the **Federal Register** on July 31, 1987 (52 FR 28595) with an invitation to comment. A summary of the comments received and the Secretary's responses to those comments are included below.

Comment: A commenter suggested that OCR update its training component for State, local, and human services agencies by including multicultural/sensitivity objectives to assist in correcting the gap that exists between educators and national or ethnic minorities.

Response: No change has been made to the AOP. Through OCR's technical assistance program, OCR works closely with state and local education and civil and human rights agencies and with other components within the Department (e.g., Office of Bilingual Education and Minority Languages Affairs; Office of Special Education and Rehabilitative Services; Office of Vocational and Adult Education; and Office of Elementary and Secondary Education) to ensure that ED recipients and beneficiaries are provided information and training on race, national origin, sex, and handicap related civil rights issues.

Comment: A commenter suggested that OCR develop some materials that are written in plain language or at the eighth grade level to disseminate to consumers and parents of consumers who do not have a high level of education.

Response: No change has been made to the AOP. As new publications are developed, this concern will be considered. However, the need to accurately reflect existing statutes and regulations somewhat limits OCR's ability to simplify the language in its publications. All OCR publications refer the public to the appropriate regional office for further information or clarification.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan includes the Fall 1988 Elementary and Secondary School Civil Rights Survey. A notice published in the **Federal Register** in the fall of 1987, prior to submission of the survey OMB, notifies the public of OCR's intention to gather the data. This survey is scheduled to be approved by OMB in April 1988. Distribution to selected local educational agencies will follow. In addition to the above survey, OCR jointly sponsors two surveys with the Center for Statistics, the Fall Enrollment Survey (OMB control number 1850–0582) and the Completions of the Integrated Postsecondary Education Data System (OMB control number 3086–0238).

Dated: December 9, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–28681 Filed 12–11–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.031A, CFDA No. 84.031G]

Invitation of Applications for Designation as an Eligible Institution for Fiscal Year 1988 for the Strengthening Institutions Program and the Endowment Challenge Grant Program, Title III of the Higher Education Act, as Amended (HEA)

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated as eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: January 29, 1988.

Applications Available: December 23, 1987.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has an enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent undergraduate student in comparison with the average E&G expenditure per full time equivalent undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Program regulations.

Under 34 CFR 607.3, an institution is considered to have an enrollment of needy students if—

(1) At least 50 percent of its degree students received assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded

the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offered similar instruction.

The following tables, which use the 1985–86 award year as the base year, identify the relevant median Pell Grant percentages and average E&G expenditures. To qualify, an applicant's Pell Grant percentage must be more than the percentage listed and the applicant's E&G expenditures must be less than the amount listed.

	Median pell grant percentage	Average E&G per FTE student
Two-year Public Institutions	21.12	$4,353.00
Two-year non-profit Private Institutions	31.51	4,244.00
Four-year Public Institutions	24.14	8,006.00
Four-year non-profit Private Institutions	25.75	8,995.00

Waiver Information: Applicants unable to meet the needy student enrollment and/or the E&G expenditure requirements may apply to the Secretary for waivers of these requirements under various options described in 34 CFR 607.3(b) for the needy student waiver and 34 CFR 607.4 (c) and (d) for the E&G expenditure waiver.

For the purpose of § 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1985–86 were students from low-income families, "low-income" is defined as an amount equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The following table sets forth the low-income family levels for varius sized families.

For the purposes of this waiver provision, low-income families are identified according to the following:

Size of family [1]	Gross annual family income must be less than [2]
1	$8,040
2	10,860
3	13,680
4	16,500
5	19,320
6	22,140
7	24,960
8	27,780

[1] For all families with more than 8 members add $2,820 for each additional member.

[2] Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family Income Column.

Source: U.S. Department of Health and Human Services as published in the FEDERAL REGISTER, of February 11, 1986, 51 FR 5105–5106.

Applicable Regulations: Regulations applicable to the eligibility process include: (a) The Strengthening Institutions Program, 34 CFR Part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR Part 628; and (c) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Dr. Louis J. Venuto, Chief, Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB#3, Washington, DC 20202, Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057 and 1065a.

Dated: December 9, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–28682 Filed 12–11–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.039]

Invitation of Applications for New Awards Under the Library Research and Demonstration Program

Purpose: Provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, for training in librarianship, and for the dissemination of information derived from such projects.

Deadline for Transmittal of Applications: March 18, 1988.

Deadline for Intergovernmental Review Comments: May 23, 1988.

Applications Available: February 5, 1988.

Available Funds: The final appropriation for fiscal year 1988 has not been determined. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year.

Estimated Average Size of Awards: $50,000–$100,000.

Estimated Number of Awards: 3–6.

Project Period: 12 months.

Applicable Regulations: (a) The Higher Education Act Library Research and Demonstration Program, 34 CFR Part 777, and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: December 8, 1987.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–28683 Filed 12–11–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.073C]

Invitation of Applications for New State Facilitator Awards under the National Diffusion Network Program for Fiscal Year 1988

Purpose: Provides grants for the dissemination of exemplary education programs within each State, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau.

Deadline for Transmittal of Applications: February 1, 1988.

Deadline for Intergovernmental Review Comments: April 1, 1988.

Applications Available: December 16, 1987.

Available Funds: $5,000,000.

Estimated Range of Awards: $40,000 to $200,000

Estimated Number of Awards: 57; One award in each State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau.

Project Period: The Secretary expects to make these awards for a project period of up to 48 months.

Applicable Regulations: (a) The National Diffusion Network Regulations at 34 CFR Parts 785 and 788, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications For Information Contact: Ms. Lois N. Weinberg, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208. Telephone: (202) 357–6147.

Program Authority: 20 U.S.C. 3851.

Dated December 9, 1987.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 87-28684 Filed 12-11-87; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 29, 1987.

ADDRESS: Department of Education, Room 3000, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Acting Executive Director, Intergovernmental Advisory Council on Education, 513 Reporters Building, 300 Seventh Street SW., Washington, DC 20202, 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3424). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovermental policies and relations pertaining to education.

The meeting of the Executive Committee is open to the public. The proposed agenda includes:

—Old Business
—Discussion of 1988 Conference Planning
—Update on Status of Job Training and Retraining Report
—Budget overview
—Other new business.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 513 Reporters Building, 300 Seventh Street SW., Washington, DC, from the hours of 9:00 a.m. to 5:00 p.m.

Dated: December 9, 1987.

Barbara Buchhorn,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 87-28639 Filed 12-11-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP-88-96-000 et al.]

Consolidated Gas Transmission Co. et al.; Natural Gas Certificate Filings

December 8, 1987.

Take notice that the following filings have been made with the Commission:

1. Consolidated Gas Transmission Co.

[Docket No. CP88-96-000

Take notice that on November 24, 1987, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-96-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing The River Gas Company (River Gas) to (1) Change D-1 and D-2 Billing Determinants and (2) add certain delivery points to River Gas, all as more fully set out in the application which is on file with the Commission and open to Public Inspection.

Applicant seeks authorization to decrease River Gas' combined D-1 billing determinants and increase combined D-2 billing determinants effective September 1, 1987, as permitted by the Commission's order approving applicant's settlement agreement in Docket No. RP85-169 *et al.*, issued on February 13, 1987. Applicant states that the certificate requested herein is subject to its acceptance of the Commission's rehearing order issued on November 4, 1937, in Docket No. RP85-169-004.

Applicant also requests authority to amend River Gas's Service Agreement to include existing new delivery points for River Gas to provide flexibility in managing its gas supplies. No new facilities are proposed to be constructed. Applicant alleges that the decrease in combined D-1 charges, more that completely offsets minimal increases in combined D-2 charges.

Because of the minor nature of the change, no significant impact is alleged to occur to Applicant's other customers, it is stated.

Comment date: December 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP88-91-000]

Take notice that on November 23, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-91-000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point and appurtenant facilities for deliveries of natural gas to Wisconsin Gas Company (Wisconsin Gas) under the certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate the delivery point in Rusk County, Wisconsin, where Wisconsin Gas would serve National Steel Fabricators, Inc., delivering up to 36 Mcf of gas on a peak day and 3,760 Mcf on an annual basis. It is stated that the end-use of the gas would be industrial and that the deliveries would be within Wisconsin Gas' currently authorized entitlement from Northern. It is asserted that the deliveries would have no impact on Northern's peak day and annual deliveries. It is explained that the cost of the proposed facilities is estimated at $4,790, with a requirement that Wisconsin Gas contribute $3,129 in aid of construction.

Comment date: January 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP87-154-001]

Take notice that on November 20, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP87-154,001 a petition in accordance with the provisions of section 7(c) and section 16 of the Natural Gas Act for issuance of an order amending the limited-term certificate of public convenience and necessity issued to Southern on September 30, 1987, in Docket No. CP87-154-000, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern indicates that pursuant to the certificate issued in Docket No. CP87-154-000, it is presently authorized to perform limited-term transportation service on behalf of SNG Trading Inc. (SNGT) for delivery to South Georgia Natural Gas Company (South Georgia).

Specifically, the certificate authorizes Southern to transport up to 30,000 MMBtu of natural gas per day purchased by South Georgia from SNGT for a term expiring October 31, 1987, under terms and conditions set forth in a transportation agreement between Southern, South Georgia, and SNGT dated December 12, 1986 (Agreement).

Southern states that it has received a request from SNGT to continue the transportation service after the expiration of the existing certificate authorization. The Agreement provides that Southern may continue to serve SNGT beyond the currently authorized termination date. Southern filed this Petition to Amend the transportation services authorized in Docket No. CP87-154-000 under section 7(c) of the Natural Gas Act.

Accordingly, Southern requests that the limited-term certificate issued September 30, 1987, in Docket No. CP87-154-000, be extended for a limited term ending October 31, 1988.

Comment date: December 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Transwestern Pipeline Co.

[Docket No. CP88-99-000]

Take notice that on December 1, 1987, Transwestern Pipeline Company (Transwestern) 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88-99-000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act for blanket authorization to make certain sales in interstate commerce along with pre-granted authority to abandon such sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern requests blanket authority to make sales in interstate commerce for resale of existing excess natural gas supplies to both off-system and on-system purchasers, including interstate and "Hinshaw" pipelines and local distribution companies (LDC's). It is indicated that such sales would be made on an interruptible basis in accordance with the provisions of Transwestern's proposed Rate Schedule IS-1, which is to be established as part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. Transwestern also requests blanket authority to use its existing transmission facilities to implement direct sales to end-users. In conjunction with the proposed blanket sales authority, Transwestern requests pregranted authority to abandon sales made under Rate Schedule IS-1 at the end of the term of the service agreement between Transwestern and any purchaser, or in the case of an end-user, to abandon deliveries to such end-user at the end of the terms of the sales contract between Transwestern and such end-user. Transwestern states that its proposal is designed to allow it to sell natural gas supplies in excess of the demand of its on-system firm sales customers.

Transwestern proposes to charge a rate for service under Rate Schedule IS-1 within a range of a rates between a minimum and maximum. It is stated that the maximum rate during any period that Transwestern's PGA is in effect would be equal to the higher of Transwestern's one hundred percent load factor rate, based on its currently effective Rate Schedule CDQ-1 sales rates. It is indicated that the maximum rate during any period in which Transwestern's PGA is suspended would be equal to Transwestern's one hundred percent load factor rate based on Transwestern's currently effective Rate Schedule CDQ-1 sales rate computed using the highest gas cost set forth on the price/volume curves filed pursuant to section 24 of the General Terms and Conditions of Transwestern's tariff. It is stated that the minimum rate would be equal to Transwestern's actual incremental cost of purchased gas incurred in making the sale, plus fuel and the variable costs of delivering the gas, along with other applicable charges such as the GRI surcharge and the Annual Charge Adjustment surcharge. It is explained that the actual rate charged would be a negotiated rate within the above referenced range, and would be set forth in the sales agreement between Transwestern and the IS-1 purchaser.

Transwestern states that the interruptible sales under proposed Rate Schedule IS-1 would be made through Transwestern's existing facilities and that IS-1 purchasers would be responsible for all costs to third-party transportation. Transwestern notes that it would file a report with the Commission within 30 days following the commencement of a sale pursuant to Rate Schedule IS-1 identifying the purchaser, the sales rate, and the term of the contract. It is further indicated that not later than May 1 of each year Transwestern would file an annual report with the Commission setting forth the actual volumes sold and the total volumes received under each contract during the contract year.

Comment date: December 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corp.

[Docket CP88-93-000]

Take notice that on November 24, 1984, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-93-000, Owensboro, Kentucky 42302, filed in Docket No. CP88-93-000, an application for a certificate of public convenience and necessity (Application) pursuant to section 7 of the Natural Gas Act authorizing an increase in the contract demand of four (4) of its existing customers, all as more fully described in the application on file with the Commission, which is open for public inspection.

Applicant states that the requested increases in contract demand by the four (4) existing customers are necessary in order for those customers to adequately serve past and future growth in their residential, commercial and, in some instances, industrial loads, and to avoid incurring penalties due to contract overruns on peak days. It is indicated that the total increase in daily contract demand on the Applicant's system, if these requests are authorized would result in an increase of less than one percent (1%) in the total of aggregated contract demands. Applicant will not be required to construct any additional facilities in order to accommodate the contract demand increase requests, it is stated.

Comment date: December 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Transwestern Pipeline Co.

[Docket No. CP88-100-000]

Take notice that on December 1, 1987, Transwestern Pipeline Company (Transwestern) 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88-100-000 an application pursuant to section 7(b) of the Natural Gas Act for pregranted authority to permanently abandon certain levels of Contract Demand quantity (CDQ) allocated to its customers under Rate Schedule CDQ-1 and CDQ-3 (CDQ customers).

Transwestern states that it is filing concurrently three interrelated proposals to address the restructuring of its traditional merchant function as a result of the dramatic changes which have occured in the natural gas industry over the last several years and in response to the Commission's issuance of Order No. 500. Transwestern explains that one filing (the GIC filing-Docket No. RP88-35-000) involves a proposal to establish a Gas Supply Inventory

Charge, under which Transwestern's CDQ customers would be given the opportunity to freely nominate any level of contract demand quantity (CDQ) up to their present certificated level of CDQ (nomination) with an associated conversion of the remaining CDQ to Maximum Daily Transportation Quantities (MDTQ) under Transwestern's Rate Schedule FTS-1 pursuant to the procedures set forth in the GIC filing.

Transwestern submits that a necessary adjunct to the CDQ customer's right to freely nominate any level of CDQ is the attendant right of Transwestern to permanently abandon the level of CDQ not nominated and thus deemed MAXTQ under Rate Schedule FTS-1. Accordingly, Transwestern seeks pre-granted approval to permanently abandon certain levels of presently certificated CDQ to the extent a CDQ customer does not nominate its full level of certificated CDQ service pursuant to the procedures set forth in Transwestern's GIC filing. It is indicated that the level of natural gas sales proposed to be abandoned pursuant to the pre-granted authority sought herein would be equivalent to the difference between: (1) The present level of certificated CDQ for each CDQ customer and (2) the CDQ customer's nomination.

Transwestern states that approval of this application is contingent upon approval of the GIC filing and requests that the pre-granted abandonment authority sought herein be made effective consistent with the effective date of Transwestern's GIC filing. Transwestern states that it would agree to file any necessary tariff sheets within 15 days after the effective date of any permanent abandonment of CDQ pursuant to the pre-granted authority requested herein.

Comment date: December 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28577 Filed 12-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES88-19-000]

Duquesne Light Co.; Application

December 8, 1987.

Take notice that on November 25, 1987, Duquesne Light Company filed an application, with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, to issue not more than $250,000,000 of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date of not later than December 31, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commisison in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28663 Filed 12-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-909-000]

FPCO Oil & Gas Co.; Application for Permanent Abandonment

December 8, 1987.

Take notice that on September 17, 1987, as supplemented on October 22 and November 13, 1987, FPCO Oil & Gas Co. (FPCO) P.O. Box 60004, New Orleans, LA 70160, filed an application in Docket No. CI87-909-000 requesting permanent abandonment of sales of gas-well gas from the Mississippi Canyon Block 194 Field Offshore Louisiana, to Transcontinental Gas Pipe Line Corporation (Transco). The sale was certificated in Docket No. CI80-3-001. The subject contract dated September 17, 1979, is on file with the Commission as FPCO Oil & Gas Co. FERC Gas Rate Schedule No. 2.

FPCO states that Petro-Lewis Corporation (PLC) changed its name to FPCO as of May 1, 1987. On June 13, 1986, following extensive negotiations, PLC and its affiliates entered into two Omnibus Contract Amendment and Settlement Agreements, one effective April 1, 1986, and the other on May 1, 1986, which provided, among other things, for the modification of the pricing and quantity terms of all gas purchase contracts between Transco and PLC, *et al.* Under the terms of the settlement agreements, Transco was relieved of its accumulated take-or-pay indebtedness existing as of the effective date of each agreement, and its future obligation to take or pay for gas under the contracts covered by the settlements was

substantially reduced, as was the average price of the gas to be delivered in the future. In recognition of the substantial reduction in Transco's takes, each settlement agreement provided that, at PLC's request, Transco would permanently release up to 25% of the sum of all gas-well gas delivery capacity under the contracts covered by the settlements as agreed upon by the parties at the time of settlement. Based upon the continuing decline in Transco's takes following the settlement agreement which became effective May 1, 1986, PLC requested by letter dated May 7, 1987, the permanent release by Transco of all gas-well gas produced and sold from the Mississippi Canyon Block 194 Field under PLC's FERC Gas Rate Schedule No. 2. Deliverability is approximately 6,500 Mcf/day, which is less than 25% of the total deliverability of gas under the contracts covered by the settlement. The gas-well gas subject to FPCO's abandonment request is NGPA section 102(d) gas (60%) and section 104 post-1974 gas (40%). FPCO states that while it would not preclude the possibility of an intrastate sale of the gas-well gas following the approval of its proposed abandonment to Transco, the gas would in all likelihood be sold in an interstate market yielding the most attractive price and terms. FPCO would then seek appropriate limited-term sales authority with pregranted abandonment. FPCO request that its application be considered on an expedited basis pursuant to 18 CFR 2.77.[1]

Since FPCO has requested that the application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FPCO to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28661 Filed 12-11-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment, or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76 of the Regulations.

[Docket No. ES88-21-000]

Illinois Power Co.; Application

December 9, 1987.

Take notice that on December 3, 1987, Illinois Power Company (Applicant) filed an application with the Commission seeking authorization pursuant to section 204 of the Federal Power Act, to issue up to $500,000,000 of short-term notes to be issued from time to time, with a final maturity date of not later than December 31, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28664 Filed 12-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-48-000]

Pan Eastern Exploration Co.; Amended Petition for Adjustment

December 9, 1987.

Take notice that on October 28, 1987, Pan Eastern Exploration Company (Pan Eastern) filed an amended petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting waiver of its refund obligation to Panhandle Eastern Corporation. The refund obligation resulted form Pan Eastern charging the NGPA section 108 price when it was authorized to charge only the NGPA section 104 price for gas sold from its Eagley 1-2 well during the period October 1, 1981 through November 30, 1985. On May 29, 1987, Pan Eastern filed its initial petition for adjustment in this proceeding. In its May 29 petition, Pan Eastern stated, among other things, that because its out-of-pocket expenses exceeded sale revenues at the NGPA section 104 price, the denial of adjustment relief will result in special hardship, inequity, or an unfair distribution of burdens. In its amended petition for adjustment, Pan Eastern submitted data, purporting to show that its out-of-pocket expenses exceeded its total sales revenues at the NGPA section 104 price for the above-mentioned 1981 through 1985 period.

Notwithstanding the time specified for filing motions to intervene by the notice of Pan Eastern's initial petition in this proceeding, 52 FR 43104 (Nov. 9, 1987), this notice will allow additional time, as set out below, for filing motions to intervene.

The procedures applicable to the conduct of this proceeding are in Rules 1101-1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in the proceeding must file a motion to intervene under Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28662 Filed 12-11-87; 8:45 am]

BILLING CODE 6717-01-M

Existing Licensee's Intent To File an Application for New License

December 9, 1987.

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Lower Hydroelectric Project No. 2421, filed a statement of its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Lower Hydroelectric Project No. 2421 will expire on December 31, 1993. The project is located on the North Fork of the Flambeau River in Price County, Wisconsin, and has a total capacity of 1,500 kVA.

The principal project works currently licensed for Project No. 2421 are: (1) A concrete dam 186 feet long and 32 feet high, with earth-filled abutments; (2) a powerhouse enclosing three turbine-generators; (3) a substation; and (4) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost, at the licensee's offices as described in the Interim Rule.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28660 Filed 12-1-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200065 thru 224-200073.

Title: State of Alabama Cargo and Freight Handling Service Permits.

Parties:

Alabama State Docks Department (Department)
Strachan Shipping Co.
Ryan Walsh Stevedoring Co., Inc.
Pate Stevedoring Co. of Mobile, Ala.
Anderson Steamship Agency, Inc.
Murray Stevedoring Co, Inc.
Atlantic & Gulf Stevedores of Ala.
Cooper/T Smith Stevedoring Co., Inc.
Chickasaw Terminal Corporation
Mobile Independent Stevedoring

Synopsis: The proposed agreements would grant said independent contractors authority to perform or have performed cargo and freight handling services at the Department's port facilities in Mobile, Alabama pursuant to the terms of these agreements and in accordance with the Department's tariff. Their term of the agreement is for one year with automatic renewal for additional one-year terms.

Agreement No.: 224-01690A.

Title: City of Los Angeles Terminal Agreement.

Parties:

Mitsui O.S.K. Lines, Ltd. (Mitsui)
Trans Pacific Container Service Corporation (TPCSC)

Synopsis: The proposed agreement provides that Mitsui transfers its interest in user Permit No. 552 to TPCSC who agrees to assume and perform all assignor's duties and obligations under the basic agreement.

Agreement No.: 224-010690-002.

Title: City of Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles, Board of Harbor Commissioners
Mitsui O.S.K. Lines, Ltd.
Trans Pacific Container Service Corporation

Synopsis: The proposed agreement changes the originally proposed owner of the cranes assigned under the basic agreement from Sumitomo Corporation of America to MetLife Capitol Corporation.

By Order of the Federal Maritime Commision.

Joseph C. Polking,

Secretary.

Dated: December 9, 1987.

[FR Doc. 87-28638 Filed 12-11-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisitions of Shares of Banks or Bank Holding Companies; Donald C. Bauerle, Sr., et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 4, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mr. Donald C. Bauerle, Sr.,* Cashiers, North Carolina; to acquire up to 13.3 percent of the voting shares of Carolina Mountain Holding Company, Highlands, North Carolina, and thereby indirectly acquire Carolina Mountain Bank, Highlands, North Carolina.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Penrose C. St. Amant,* Gonzales, Louisiana; to acquire an additional 2.68 percent of the voting shares of Bank of Gonzales Holding Company, Inc., Gonzales, Louisiana, and thereby indirectly acquire Bank of Gonzales, Gonzales, Louisiana.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gregory H. Bohlen,* Findlay, Illinois; to acquire 17 percent of the voting shares of Findlay Bancshares, Findlay, Illinois, and thereby indirectly acquire Bank of Findlay, Findlay, Illinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *William H. Teeter,* St. Paul, Minnesota; to acquire an additional 1.05 percent of the voting shares of Stillwater Bancorporation, Inc., Stillwater, Minnesota, and thereby indirectly

acquire Cosmopolitan State Bank of Stillwater, Stillwater, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenic, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James E. Berkely,* Stockton, Kansas; to acquire an additional 2.26 percent of the voting shares of Rooks County State Bank, Stockton, Kansas.

2. *Christian K. Keesee,* Oklahoma City, Oklahoma; to acquire 12.4 percent of the voting shares of American Bancorp of Edmond, Inc., Edmond, Oklahoma, and thereby indirectly acquire American Bank and Trust, Edmond, Oklahoma.

3. *John E. Kirkpatrick,* Oklahoma City, Oklahoma; to acquire 38.2 percent of the voting shares of American Bancorp of Edmond, Inc., Edmond, Oklahoma, and thereby indirectly acquire American Bank and Trust, Edmond, Oklahoma.

4. *Eleanor B. Kirkpatrick,* Oklahoma City, Oklahoma; to acquire 38.2 percent of the voting shares of American Bancorp of Edmond, Inc., Edmond, Oklahoma.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Centre Capital Investors, L.P.,* New York, New York; to acquire 35.10 percent of the voting shares of United New Mexico Financial Corporation, Albuquerque, New Mexico, and thereby indirectly acquire United New Mexico Bank at Alamogordo, Alamogordo, New Mexico; United New Mexico Bank at Albuquerque, Albuquerque, New Mexico; United New Mexico Bank at Carlsbad, Carlsbad, New Mexico; United New Mexico Bank at Gallup, Gallup, New Mexico; United New Mexico Bank at Las Cruces, N.A., Las Cruces, New Mexico; United New Mexico Bank at Mimbres Valley, Deming, New Mexico; United New Mexico Bank at Portales, N.A., Portales, New Mexico; United New Mexico Bank at Rio Rancho, Rio Rancho, New Mexico; United New Mexico Bank at Roswell, N.A., Roswell, New Mexico; United New Mexico Bank at Santa Fe, N.A., Santa Fe, New Mexico; United New Mexico Bank at Sorcorro, N.A., Socorro, New Mexico; United New Mexico Bank at Vaughn, Vaughn, New Mexico.

Board of Governors of the Federal Reserve System, December 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28571 Filed 12-11-87; 8:45 am]

BILLING CODE 6210-01-M

Fresno Bancorp; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Fresno Bancorp,* Fresno, California; to acquire Builders' Mortgage Company, Fresno, California, and thereby engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28572 Filed 12-11-87; 8:45 am]

BILLING CODE 6210-01-M

TrustCorp, Inc, et al.; Applications To Engage de Novo In Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public such as greater convenience, increased competition, or gains in effiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101;

1. *TrustCorp, Inc.,* Toledo, Ohio; to engage *de novo* through its subsidiary, in making and servicing loans and/or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation

Y. Comments on this application must be received by December 31, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261;

1. *First United Bancorporation,* Anderson, South Carolina; to engage *de novo* through its subsidiary, Quick Credit Corporation, Anderson, South Carolina, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *United Carolina Bancshares Corporation,* Whiteville, North Carolina; to engage *de novo* through its subsidiary, Capital Brokerage Corporation, Whiteville, North Carolina, in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in North Carolina and South Carolina.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690;

1. *Home State Bancorp, Inc.,* Crystal Lake, Illinois; to engage *de novo* in commercial and consumer finance activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the states of Indiana, Illinois, and Wisconsin.

2. *Northern Trust Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust of California National Association, in trust company activities pursuant to §25.25(b)(3) of the Board's Regulation Y.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southern Development Bancorporation, Inc.,* Little Rock, Arkansas; to engage *de novo* through its subsidiaries, Opportunity Lands Corporation, Little Rock, Arkansas, and Arkansas Enterprise Group, Inc., Little Rock, Arkansas, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, December 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28573 Filed 12-11-87; 8:45 am]

BILLING CODE 6210-01-M

Whitaker Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 4, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Whitaker Bancorp, Inc.,* Lexington, Kentucky; to merge with State National Bancorp of Frankfort, Inc., Frankfort, Kentucky, and thereby indirectly acquire The State National Bank of Frankfort, Frankfort, Kentucky, and The Garrard Bank & Trust Company, Lancaster, Kentucky. Comments on this application must be received by December 29, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City National Bancorporation, Inc.,* Washington, DC; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank of Washington, Washington, DC.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Homestate Bancorp, Inc.,* Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bancorp, Inc., Salem, Indiana, and thereby indirectly acquire The State Bank of Salem, Salem, Indiana.

2. *Southern Development Bancorporation, Inc.,* to become a bank holding company by acquiring at least 92.21 percent of the voting shares of Elk Horn Bancshares, Inc., Arkadelphia, Arkansas, and thereby indirectly acquire Elk Horn Bank and Trust Company, Arkadelphia, Arkansas.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Buffalo Bancshares, Inc.,* Buffalo, Oklahoma; to acquire 100 percent of the voting shares of The First State Bank of Gage, Gage, Oklahoma.

2. *Fairland Holding Company, Inc.,* Neosho, Missouri; to become a bank holding company by a acquiring 79.95 percent of the voting shares of The First National Bank of Fairland, Fairland, Oklahoma.

3. *FirstBank Holding Company of Colorado,* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Republic Plaza, N.A., Denver, Colorado.

4. *First Jones Bancorporation, Inc.,* Jones, Oklahoma; to become a bank holding company by acquiring 95.73 percent of the voting shares of First State Bank, Jones, Oklahoma.

Board of Governors of the Federal Reserve System, December 8, 1987.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 87-28574 Filed 12-11-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0083/CP]

Medical Laser Manufacturers Association; Neodymium:Yttrium: Aluminum:Garnet (Nd:YAG) Laser for Posterior Capsulotomy; Panel Recommendations on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Ophthalmic Devices Panel (the Panel) that FDA reclassify the ophthalmic neodymium:yttrium:aluminum:garnet (Nd:YAG) laser (mode-locked or Q-switched) intended for posterior capsulotomy from class III (premarket approval) into class II (performance standards). The Panel made this recommendation after review of a reclassification petition filed by the Medical Laser Manufacturers Association. FDA also is issuing for public comment its tentative findings on

the recommendation. After reviewing any public comment on the recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on this reclassification petition will be announced in the **Federal Register.**

DATE: Comments by February 12, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Medical Laser Manufacturers Association (MLMA) submitted to FDA under section 513(e) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360c(e)) and 21 CFR 860.120 a petition for a device reclassification. On February 20, 1986, the MLMA amended the petition to include section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)) and 21 CFR 860.134 of the regulation as a basis for its requested relief. The petitioner requests that the ophthalmic Nd:YAG laser (mode-locked or Q-switched), intended for posterior capsulotomy, be reclassified from class III into class II. The subject device is automatically classified into class III under section 513(f)(1) of the act because it is neither a preamendments device (i.e., a device that was in commercial distribution before May 28, 1976), nor substantially equivalent to a preamendments device, or substantially equivalent to any postamendments device (i.e., a device that has been placed in commercial distribution since May 28, 1976), which has subsequently been reclassified to class II or class I.

Section 513(f)(2) of the act provides that the manufacturer or importer of a device classified into class III under section 513(f)(1) of the act may file a petition for reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. For purposes of reclassification of the ophthalmic Nd:YAG laser (mode-locked or Q-switched), it is necessary to show that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred the reclassification petition to the Ophthalmic Devices Panel and on May 22, 1986, during an open public meeting, the Panel recommended that FDA reclassify the generic type of device from class III into class II. The Panel also recommended that FDA assign to this generic type of device the designation "ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy."

The ophthalmic Nd:YAG laser for posterior capsulotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser which generates short pulse, low energy, high power coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target sits causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG radiation on or in close proximity to the target tissue.

Summary of Reasons for the Recommendation

The Panel gave the following summary of reasons in support of its recommendation to reclassify the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsultomy from class III into class II:

1. The device is not an implant.
2. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.
3. There is sufficient publicly available information to establish a standard to control the device's performance parameters. Also, there is sufficient publicly available information to demonstrate that the risks to health have been determined for the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy. The relationship between the device's performance parameters and risks, and the device's safety and effectiveness is supported by valid scientific evidence.
4. FDA should assign a low priority to the establishment of performance standards for the device under section 514 of the act (21 U.S.C. 360d).
5. Various safety features of medical lasers are already controlled by existing FDA standards (21 CFR 1040.10 and 1040.11) promulgated under the Radiation Control for Health and Safety Act (42 U.S.C. 263b).

The Panel believes that the following devices subject to the petition are representative of the generic type of device: Meditec OPL–3, M–Tec 2000, Horizon 2000, Horizon 2500, and the YAG–100.

The Panel based its recommendations for reclassification of the generic type of device on data in the petition (Ref. 1), data in the eight published studies (Refs. 2 through 9) included in the petition, and data presented to the Panel during its open meeting held May 22, 1986. The Panel believes that premarket approval of the generic type of device is not necessary to provide reasonable assurance of the device's safety and effectiveness. The Panel believes that, if the agency reclassifies the generic type of device, FDA would ensure that newly marketed devices of the same generic type will be safe and effective through application of the general controls pending the development of a performance standard, consistent with FDA's standards development priorities.

Principles of Operation

A. Background

Nd:YAG lasers were developed for industrial applications, and were successfully employed in such industries as watchmaking, prior to the initiation of clinical trials in Europe and the United States. Therfore, the basic principles of operation of the device were scientifically established well before any clinical testing of the device in ophthalmic surgery. Because the technology permitted tissue disruption through a transparent media with negligible heat generation, the Nd:YAG laser appeared to be ideal for ophthalmic surgery where lasers have had a long history of successful clinical use. An increasing use of the extracapsular cataract extraction technique followed by intraocular lens (IOL) implantation which often results in an opacified posterior capsular membrane, created a demand for a laser device which would avoid the risks involved in traditional invasive surgery and could perform the capsulotomy precedure without the thermal effects characteristic to other ophthalmic laser devices.

While other types of lasers used for ophthalmic surgery use long duration exposures to achieve thermal tissue effects for photocoagulation, tissue cutting, or tissue destruction, the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy uses very short duration exposures (pulses) that are focused precisely to small spot sizes, and produce a high local irradiance (power density). The combination of short exposure duration and high irradiance results in nonlinear absorption of the radiation by the target tissue, causing tissue disruption through optical

breakdown. The plasma generated by the process of optical breakdown provides protection for posterior tissue in direct line with the incident beam. These characteristics are unique among lasers to the ophthalmic Nd:YAG laser, and permit it to perform successfully the capsulotomy procedure, where other ophthalmic lasers have failed.

The Nd:YAG laser is one component of the overall device system which includes not only the laser but the conditioning optics, a delivery system, an aiming system, and operator controls. Its laser beam must be shaped by conditioning optics to a configuration with a specific profile and desired characteristics. The physical properties of the Nd:YAG laser beam that directly influence the ability of the device to perform its intended function safely and effectively are its invisible infrared beam at a wavelength of 1,064 nanometers, output pulse generating method, output energy, pulse width, spatial mode, convergence angle, spot size, and pulse repetition frequency. The only variable to be selected by the ophthalmic surgeon during the posterior capsulotomy procedure is the device's output energy.

B. Device Specifications

The following specifications were derived from the data from studies included in the petition for Nd:YAG lasers (Ref. 1). Mode-locked laser output consists of a train of 7 to 10 pulses with a pulse duration of about 30 nanoseconds and a pulsewidth of about 30 picoseconds. Q-switched laser output consists of single pulses, with pulsewidths of about 2 to 20 nanoseconds in duration.

The typical threshold of optical breakdown of tissue in air for mode-locked lasers is 10^{14} watts per centimeter squared, and for Q-switched lasers is 10^{11} watts per centimeter squared. The threshold for optical breakdown of tissue in an aqueous environment appears to be lower but varies depending upon the nature of the tissue. For disruption of the posterior capsule of the eye, and energy setting of 1 to 2 millijoules results in optical breakdown creating the desired tissue effect.

In addition to the laser, the other two main components of the device system subject to the petition are a visible light beam aiming system and a slit-lamp biomicroscope used by the operator to target the treatment laser beam and to monitor visually the treatment process.

Risks To Health

The Panel concluded that the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy is effective, and for that conclusion relied on the publicly available information establishing that the device can successfully perform a discission of the posterior capsule. The Panel has determined that all reasonably foreseeable risks to health associated with the device are related to unintentional damage to nontarget tissue or latent postoperative complications resulting from user error or device malfunction. These include corneal damage or edema, iris damage, iritis, damage to an IOL in a pseudophakic patient, rupture of the anterior hyaloid face, retinal damage or detachment, hyphema, vitritis, cystoid macular edema, pupillary block, increases in intraocular pressure (IOP), and secondary glaucoma.

Summary of Data Upon Which the Recommendations is Based

The Panel gave close attention to the risks associated with the use of the device. The clinical studies included in support of this petition report few risks to health and those that are reported have been clearly identified and documented. The device specifications for the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for poterior capsulotomy (see the "Principles of Operation" section) show that a performance standard may be established that can provide reasonable assurance of safety and effectiveness of the device. The incidence rates for corneal damage and edema, iris damage, iritis, retinal damage and detachment, hyphema, vitritis, cystoid macula edema, pupillary block, and secondary glaucoma are either lower than those for invasive surgery or are self-limiting and not persistent (Refs. 1 and 9).

In the case of IOL damage, rates of pitting are varied with studies on the subject devices ranging from 4 percent to 40 percent (Refs. 1 through 4 and 6 through 9). This broad range of incidence of IOL pitting reflects that methods of reporting pitting are non-standardized.

Factors such as slit-lamp illumination, magnification, and the time and care taken by the opthalmic surgeon during the examination all effect the rate and degree of damage by pitting, and therefore, the reported incidence of this phenomenon. Notwithstanding the above observations, the data identify a relationship between the inherent accuracy of the device and user experience.

There has been no correlation between reported IOL pitting and decreases or other effects on patient visual acuity. Of critical importance when considering potential damage to the IOL are the reports of glass IOL's cracking. Device labeling has addressed this problem by contraindicating Nd:YAG posterior capsulotomy in pseudophakic patients with posterior chamber glass IOL implants except when the patient's condition precludes invasive surgery (Ref. 9).

Hyaloid face rupture has been observed in approximately 15 to 32 percent of those patients having Nd:YAG laser posterior capsulotomy (Refs. 1, 6, and 9). This observation occurs in a large proportion of patients undergoing invasive capsular surgery due to the close proximity of the hyaloid face to the posterior capsule. Like IOL pitting, this rate is affected by the accuracy of the device and user experience. If hyaloid face rupture occurs, virtreous may consequently enter the anterior chamber. When vitreous touches the corneal endothelium, there may be an increased incidence of late onset corneal edema.

Increases in IOP in patients have been commonly reported following Nd:YAG laser posterior capsulotomy (Refs. 1, 3, 5, 6, 7, and 9). Although IOP rises may be associated with ophthalmic surgery in general, rises following laser surgery have a greater potential for being sight threatening due to the fact that the ocular globe is a closed system. Studies have clearly established that IOP should be monitored closely in the immediate postoperative period following Nd:YAG laser posterior capsulotomy. Generally, IOP rises of clinical significance are being detected 2 to 3 hours after treatment (Ref. 1).

Although the risks of IOP rises in most patients following laser posterior capsulotomy can be controlled or avoided with proper medication, a small proportion of patients (2 to 3 percent) may develop secondary glaucoma requiring long-term treatment with medication (Refs. 1 and 9). Pretreatment of patients with IOP lowering medications has been demonstrated to significantly decrease the incidence of IOP rises in the immediate postoperative period (Ref. 3). In fact, many surgeons prophylactically treat all patients scheduled for Nd:YAG laser posterior capsulotomy with IOP lowering medications.

The risks identified above that are directly attributable to the Nd:YAG laser can be addressed by class II controls. The risks of IOL damage and hyaloid face rupture are related to the focusing accuracy and precision of the device and, therefore, can be controlled through ensuring proper device design. In addition, through proper device

labeling disclosures, the risk of IOP rise can be controlled by the surgeon through available, established medical treatments. In summary, a device designed with the proper device specifications and produced under an adequate quality assurance program that will ensure that critical specifications are met within specified tolerances can reasonably assure that the ophthalmic Nd:YAG (mode-locked or Q-switched) is safe and effective for discission of the posterior capsule of the eye, when the device is used consistent with appropriate labeling.

FDA's Tentative Findings

FDA tentatively agrees with the Panel's recommendations that the generic type of device, ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy, be reclassified from class III into class II.

References

The transcript of the Panel meeting and the following material are on public file in the Dockets Management Branch (address above), where they may be seen by interested perons between 9 a.m. and 4 p.m., Monday through Friday.

1. Medical Laser Manufacturers Association's petition (five independent clinical investigations).

2. Aron-Rosa, D.S., J.J. Aron, and H.C. Cohn, "Use of a Pulsed Picosecond Nd:YAG laser in 6,664 Cases, "*American Intra-Ocular Implant Society Jounal,* pp 35–39, 1984.

3. Aron-Rosa, D.S., "Posterior Capsulotomy and Picosecond Pulsed YAG Laser Influenced on Eye Pressure," *Cataract,* pp. 13–17, 1983.

4. Aron-Rosa, D.S., J.J. Aron, and J.C. Griesman, Paper presented at the U.S. Intraocular Lens Symposium, Los Angeles, CA, 1981.

5. Keates, R.H., "Long-Term Follow-up of Nd:YAG Laser Posterior Capsulotomy," *American Intra-Ocular Implant Society Journal,* pp. 164–168, 1984.

6. Terry, A.C., et al., "Neodymium-YAG Laser for Posterior Capsulotomy," *American Journal of Ophthalmology,* pp. 716–720, 1983.

7. Channel, M.M., and H. Beckman, "Intraocular Pressure Changes After Neodymium-YAG Laser Posterior Capsulotomy," *Archives of Ophthalmology,* pp. 1024–1026, 1984.

8. Johnson, S.R., R.P. Kratz, and P.F. Olson, "Clinical Experience with the Nd:YAG Laser," *American Intra-Ocular Implant Society Journal,* pp. 452–460, 1984.

9. "Public Health Service Assessment of Nd:YAG Laser for Posterior Capsulotomy," *in* "Health Technology Assessment Report," pp. 317–334, 1984.

Economic Consideration

After condisering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition will not have a significant economic impact on a substantial number of small entities. However, it may permit small potential competitors to enter the marketplace by lowering the barriers of entry. The petitioner and all future manufacturers of the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy will be relieved of the costs of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). There are no off-setting costs that the petitioner will incur from reclassification into class II other than those associated with meeting a standard once established. The magnitude of the economic savings from approval of this petition depends on the total costs that members of the industry would incur to achieve approvals of supplements to premarket approval applications, and original premarket approval applications. These costs may not be reliably calculated to permit quantification of the economic savings. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulations (21 CFR 860.134(b)(5)), FDA is required to publish this notice in the **Federal Register** as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the **Federal Register** this notice without clearance of the Director, Office of Management and Budget. FDA will notify that Office of the publication of this notice.

Comments

Interested persons may, on or before February 12, 1988, submit to the Dockets Management Branch (address above) written comments on this recommendation. Two copies of any comments are to be submitted. Individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 5, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–28630 Filed 12–11–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Heart, Lung and Blood Institute; Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to Pub. L. 93–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, January 21–22, 1988, Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on Thursday, January 21, and from 12:30 p.m. on Thursday to adjournment on Friday, January 22, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G. C. McMillian, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 4, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–28619 Filed 12–11–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1762]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is solicting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Approval of Escrow Funds.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The form is used by the mortgagor to request release of funds from the Escrow Agreement for offsit facilities, construction changes, or construction costs not paid at final endorsement. HUD needs the information to analyze the requested amounts and to authorize approval.
Form Number: HUD92464.
Respondents; Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Response: On Occasion.
Estimated Burden Hours: 18,000.
Status: Extension.
Contact: Kerry J. Mulholland, HUD, (202) 426–0283; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 9, 1987.

Proposal: Format: Sample Change Order/or Proceed Order.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: Change order and/or proceed orders are needed to formalize and change in construction of a housing project. They direct a contractor to add, delete, or substitute certain construction elements and establish a cost for the work and a timeframe for completion. The information is used by HUD to ensure that suitable equipment and materials meet HUD standards and codes.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Estimated Burden Hours: 5,081.
Status: Reinstatement.
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1987.

Proposal: Section 8 Housing Assistance Payment Program (HAPP) for Existing Housing and Housing Voucher Programs.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This form is used by public housing agencies (PHAs) applying for an allocation of Section 8 Existing Housing units. It is needed by HUD to make funding decisions based on a determination of consistency with housing needs and evidence of PHAs capability.
Form Number: HUD–52515.
Respondents: State or Local Governments.
Frequency of Response: On Occasion.
Estimated Burden Hours: 6,000.
Status: Reinstatement.
Contact: Myra E. Newbill, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1987.

Proposal: Personal Financial and Credit Statement.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The form, Personal Financial and Credit Statement, is submitted with the initial application for mortgage insurance of a project. The form is used by HUD to determine whether the sponsor will be able to develop a successful project and have the resources to complete the project.
Form Number: HUD–92417.
Respondents: Individuals of Households, Businesses or Other For-Profit, and Non-Profit Institutions.
Frequency of Response: On Occasion.
Estimated Burden Hours: 64,000.
Status: Extension.
Contact: Kerry J. Mulholland, HUD, (202) 426–0283; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1987.

Proposal: American Housing Survey—1988 Metropolitan Sample (AHS–MS).
Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: The 1988 AHS–MS is a longitudinal study that collects current information on the quality, availability, and cost of housing in eleven selected metropolitan areas. The study also provides information on demographic and other characteristics of the occupants. Federal and local government agencies use AHS data to evaluate housing issues.
Form Number: AHS–61, 62, 63, 66, 67, 68, and 590.
Respondents: Individuals or Households.
Frequency of Respondents: Annually.
Estimated Burden Hours: 25,386.
Status: Revision.
Contact: Duane T. McGough, HUD, (202) 755–5060; Arthur F. Young, Census, (301) 763–2863; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-28676 Filed 12-11-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-919-08-4213-02]

Northern Alaska Advisory Council; General Meeting

A general meeting of the Northern Alaska Advisory Council, open to the public, will be held to discuss the Utility Corridor Draft Resource Management Plan/Environmental Impact Statement.

The meeting will be from 8:30 to 12 p.m. on Thursday, January 14, 1988, at BLM's Fairbanks Support Center, 1541 Gaffney Road, on Fort Wainwright.

Public comments on the agenda items will be received by the Council from 9 to 10 a.m. Oral comments may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

For further information contact the Public Affairs Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, telephone (907) 356-2345.

Roger Bolstad,

Designated District Manager, Northern Alaska/Kobuk District.

November 27, 1987.

[FR Doc. 87-28193 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-84-M

[ES-940-08-4520-13; ES-037835, Group 20]

Illinois; Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of the Rend Lake Acquisition Boundary

December 7, 1987.

1. The plat, in seven sheets, of the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 6, 7, 8, 9, 17, 31, 32, 33 and 34, and the Rend Lake acquisition boundary, Township 4 South, Range 3 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on January 21, 1988.

2. The dependent resurvey and survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., January 21, 1988.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 87-28560 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-GJ-M

[NV-930-08-4212-11; N-46544]

Realty action; Battle Mountain District, Tonopah Resource Area; Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; Classification of Federal lands for lease or sale for recreation and public purposes in Nye County, Nevada.

SUMMARY: In response to an application from the State of Nevada, Division of State Lands for a prison honor camp, the following described lands have been examined and found to be suitable for lease or sale under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et. seq.*):

Mount Diablo Meridian

T. 4 N., R. 43 E.,
Section 25, S½NW¼, W½SW¼, SE¼SW¼.

A parcel of land containing 200 acres.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No surface disturbing activity will be permitted on these lands until a cultural resources inventory has been completed.

The lands described in this notice meet the criteria for classification set forth in 43 CFR 2410.1-2 and 2430.4. They will not be offered for lease or sale until the classification becomes effective, and a cultural resources inventory has been completed.

The patent, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable laws and such regulations as the Secretary of the Interior may prescribe.

And would be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights in existence at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register**, the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act. The segregative effect will end upon issuance of patent or as specified in an opening order to be published in the **Federal Register.**

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: December 1, 1987.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 87-28600 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-08-4212-11; N-46544]

Realty Action; Battle Mountain District, Tonopah Resource Area; Nye County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; Realty action, classification of Federal lands for lease or sale for public purposes in Nye County, Nevada.

SUMMARY: **Federal Register** Document 87-25017, appearing in 52 FR 41634 on October 29, 1987, contained erroneous information relative to termination of the segregative effect on the lands described therein. Said notice is hereby corrected to read that the segregative effect will terminate upon issuance of a patent or as specified in an opening

order to be published in the Federal Register, whichever occurs first.

Dated: November 27, 1987.

Michael C. Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 87-28598 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-08-4212-14; N-46236]

Realty Action; Battle Mountain District, Tonopah Resource Area; Nye County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; Realty action, classification of Federal lands for lease or sale for public purposes in Nye County, Nevada.

SUMMARY: Federal Register Document 87-25018, appearing in 52 FR 41634 on October 29, 1987, contained erroneous description of the lands found suitable for sale. The legal description in said notice is hereby corrected to read:

Mount Diablo Meridian, Nevada

T. 11 N., R. 44 E.,
Section 15, SW¼NW¼SE¼SW¼, SW¼SE¼SW¼, W½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼.

Date: November 30, 1987.

Michael C. Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 87-28599 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

[PRT-723387 et al.]

Receipt of Applications for Permits; Don V. Bryson et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-723387

Applicant: Don V. Bryson, Paintsville, KY

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Dr. H.J. Wessels, Harrismith, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-723390

Applicant: Ralph A. Baglino, Glendale, AZ

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Mr. P.J. van der Merwe, Hutchinson, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-723607

Applicant: William E. Schwartz, Bossier City, LA

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Mr. F. W. M. Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-723368

Applicant: Eugene Alan Adelman, Lincolnwood, IL

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Mr. P.J. van der Merwe, in Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-723605

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one captive born Central American tapir (Tapirus bairdii) male from the Beijing Zoological Gardens, Beijing, People's Republic of China, for the purpose of providing a new founder to the North American captive population for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: December 4, 1987.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 87-28578 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Pacific Regional Technical Working Group Committee of the National OCS Advisory Board; Meeting

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet January 12-13, 1988 from 8:30 a.m. to 5:00 p.m., at the Sheraton Town House, Regency Room, 2961 Wilshire Boulevard, Los Angeles, California.

The Agenda for the meeting covers the following topics:

Review of Pacific OCS Issues and Activities; OCS Policy Committee Meeting in Corpus Christi, Texas, November 2-5, 1987
Final 5-Year Oil and Gas Leasing Program
Status of Lease Sales 91 and 95
Oregon and Washington Coordination for Lease Sale 132
Update on Post Lease Projects
Post Lease Environmental Analysis
Oregon-Washington Statement Planning Area
Proposed Lease Sale 132
Environmental Studies Program Update
Monitoring: Assessment of Long-Term Changes in Biological Communities in the Santa Maria Basin—Program Update
Update: SCCCAMP Data Archive and Data Analysis
Office of Strategic and International Minerals: Status of Federal Marine Minerals and Regulations Promulgated by DOI Minutes of the meeting will be available for public inspection and copying at the following locations:
Pacific OCS Region, 1340 West Sixth Street, Room 275, Los Angeles, CA 90017
Office of the Offshore Information Service, Minerals Management Service, Department of the Interior, Washington, DC 20240.

Dated: December 4, 1987.

William E. Grant,

Director, Pacific OCS Region.

[FR Doc. 87-28628 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Golden Gate National Recreation Area Advisory Commission;

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, January 7, 1988, at the Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items at this public meeting will be public comment on the Environmental Assessment on the Proposed Relocation of the Central Maintenance Facility for Golden Gate National Recreation Area and a GGNRA staff presentation on proposed bicycle trails within Golden Gate National Recreation Area.

The first item on the agenda will be comment and consideration of the Environmental Assessment on the Proposed Relocation of the Central Maintenance Facility of the Golen Gate National Recreation Area. The proposal for relocating the maintenance facility to an 8-acre parcel adjacent to Fort Point National Monument from its current location at Pier 1 at Fort Mason was presented to the public at the November 10, 1987 meeting of the GGNRA Advisory Commission. Environmental documents on this project are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556–4484.

The second agenda item will be a presentation by the staff of the Golden Gate National Recreation Area of a proposed bicycle route plan for the Golden Gate National Recreation Area.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on these items. Statements will be accepted until January 22, 1988.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after January 25, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: November 27, 1987.

John D. Cherry,

Acting Regional Director, Western Region

[FR Doc. 87–28615 Filed 12–11–87; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area; Public Hearing

Section 460bb–2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb–2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely within the boundaries of the GGNRA. The legislation also requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Thursday, January 7, 1988, in order to present to the public and solicit its views on the proposal to build a bowling center facility at the Presidio of San Francisco by the U.S. Army. The hearing will commence at 7:30 p.m. (PST) at Building 201, Fort Mason, San Francisco, California.

The one-story bowling center facility was initially described at a public hearing on January 15, 1987. Since that time, the U.S. Army has re-sited the proposed facility in response to comments made at the initial public hearing. The 12,200 square foot structure will include 12 bowling lanes, a small snack bar, a game room, and a sales counter. A fact sheet and an environmental document on the bowling center are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556–4484.

Interested individuals, representatives of organizations, and public officials are invited to express their views in persons at the aforementioned public hearing. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on this construction project. Statements will be accepted until January 22, 1988.

The meeting will be recorded for documentation and transcribed for dissemination.

Date: November 27, 1987.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 87–28614 Filed 12–11–87; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395–7313.

Title: Coal Production and Reclamation Fee Report, Form OSM–1

Abstract: In order to insure compliance with 30 CFR Part 870 a quarterly

record is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau Form Number: OSM-1
Frequency: Quarterly
Description of Respondents: Coal Operators
Annual Responses: 22,000
Annual Burden Hours: 5500
Bureau Clearance Officer: David A. Collegeman 343-5447

Date: December 3, 1987.

Donald Hinderliter,

Acting Assistant Director, Budget and Administration.

[FR Doc. 87-28561 Filed 12-11-87; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub-No. 96)]

The Chesapeake and Ohio Railway Co.; Abandonment in Cass, Fulton, Pulaski, and Starke Counties, IN; Notice of Findings

The Commission has issued a certificate authorizing The Chesapeake and Ohio Railway Company to abandon its 38.56-mile rail line between Twelve Mile, IN (milepost 173.99) and North Judson, IN (milepost 212.55), in Cass, Fulton, Pulaski, and Starke Counties, IN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in *bold face* on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: December 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-28643 Filed 12-11-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[CV-87-3776]

Lodging of Consent Decree Pursuant to the Clean Air Act; Oyster Bay, NY

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on November 6, 1987, a proposed consent decree in *United States of America v. Town of Oyster Bay,* No. CV-87-3776, was lodged with the United States District Court for the Eastern District of New York. The complaint filed by the United States sought civil penalties and injunctive relief under the Clean Air Act with respect to emissions of particulates from a refuse incinerator formerly operated by the Town of Oyster Bay in Bethany, New York.

The Town terminated operation of the incinerator before January 1, 1987. Under the consent decree, the Town has agreed to pay $44,000 in civil penalties for past violations of the New York State Implementation Plan ("SIP") and the Clean Air Act and consents to the entry of an injunction prohibiting it from restarting the incinerator unless or until it: (1) Has obtained an operating permit or certificate from the New York Department of Environmental Conservation, (2) will operate the incinerator in compliance with the applicable SIP provisions, and (3) has given 60 days advance notice of the startup to EPA.

The Department of Justice will receive for a period of thirty (30) days the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, 20530, and should refer to *United States v. Town of Oyster Bay,* D.J. Ref. 90-5-2-1-919.

The proposed consent decree may be examined at the offices of the United States Attorney, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennslyvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87-28562 Filed 12-11-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Wyoming State Standards; Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Wyoming State Standards: Oil and Gas Well Drilling, Oil and Gas Well Servicing, and Oil and Gas Well Special Services.

SUMMARY: The Notice approves Wyoming's Standards for Oil and Gas Well Drilling, Oil and Gas Well Servicing, and Oil and Gas Well Special Services, submitted for approval on October 27, 1981, December 17, 1981, and November 16, 1984. These Wyoming Standards are independent State standards for which there are no Federal OSHA equivalents. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On August 4, 1987, OSHA published a **Federal Register** notice (52 Fr 28878) requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by September 3, 1987, written comments and views regarding the Wyoming standards and whether they should be approved by the Assistant Secretary. In response to this notice, OSHA received comments from three associations representing the oil and gas well industry. All three associations were in favor of the standards and recommended their approval. After review of the record, OSHA has made the decision to approve the standards.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION

A. Background

The requirements of adoption and enforcement for safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)). Independent State standards also must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Division of Occupational Health and Safety (WOHS) either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act and the Secretary's rules on rulemaking. By letters of October 27, 1981, December 17, 1981 and November 16, 1984, the standards for Oil and Gas Well Servicing, Oil and Gas Well Drilling and, Oil and Gas Well Special Services were submitted by Wyoming. The subject standards establish rules and regulations applicable to the Oil and Gas Well Drilling, Servicing, and Special Services industries in the State of Wyoming. After the normal open period for public review and comments, the Commission adopted these standards and they became effective on dates as follows: the Oil and Gas Well Drilling standard was adopted finally on July 24, 1981, and became effective on November 2, 1981; the Oil and Gas Well Servicing standard was adopted on July 23, 1981, and became effective October 5, 1981; and, the Oil and Gas Well Special Services standard was adopted on August 3, 1984, and became effective on September 6, 1984.

OSHA does not have specific standards for oil and gas well drilling. It currently applies 29 CFR Part 1910 General Industry Standards and OSHA Instruction STD 1-12-28 to conditions addressed by the Wyoming standards. The Wyoming standards were therefore compared to OSHA's general standards requirements and enforcement policy set out in OSHA Instruction STD 1-12-28, which prescribes alternative abatement methods.

b. Public Participation

A. **Federal Register** notice requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act was published on August 4, 1987 (52 FR 28878). This notice invited interested persons to submit by September 3, 1987, written comments and views regarding the standards for Wyoming oil and gas well drilling, oil and gas well servicing, and oil and gas well special services and whether they should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standards are applicable to products which are distributed or used in interstate commerce; required by compelling local conditions; and unduly burden interstate commerce. In response to the August 4, 1987 **Federal Register** notice, OSHA received comments from the Double Eagle Petroleum and Minin Company; International Association of Drilling Contractors; and, Petroleum Association of Wyoming. All comments received urged OSHA to approve the standards. Double Eagle favors Wyoming independent State standards and indicates that they meet the requirements of providing safe and healthful employment. The Wyoming Chapter of the International Association of Drilling Contractors also believes the standards meet the requirements of the Occupational Safety and Health Act. Petroleum Association of Wyoming, whose members account for more than 90% of the oil and gas well exploration and production in Wyoming, believes the Wyoming standards for oil and gas well operations fully meet the requirements of section 18(c)(2) of the Act and 29 CFR Part 1902 and 29 CFR Part 1953 and urges Federal OSHA to approve the standards.

C. Decision

Having reviewed the State submission and public comments submitted in response to the August 4, 1987 **Federal Register** notice, OSHA has determined that:

(1) The Wyoming standards are at least as effective as Federal OSHA's general standards requirements (29 CFR Part 1910 General Industry Standards) applicable to conditions addressed by the Wyoming standards and OSHA's enforcement policy set out in OSHA Instruction STD 1-12-28, which prescribes alternative abatement methods which meet the intent of 29 CFR 1910.212(a)(1) and (2) for preventing workers contact with rotating bushings and kellys and exposed portions of rotary tables on oil and gas well drilling rigs in leiu of the physical guarding requirements. Thus, OSHA determines that the State standards meet the "at least as effective" criterion of section 18(c)(2) of the Act; and,

(2) The record on these standards includes no evidence, developed by or submitted to OSHA, that the standards are not in compliance with the product clause test of section 18(c)(2) of the Act; therefore the standards are presumed to be in compliance with section 18(c)(2) of the Act.

OSHA therefore approves the Wymoning standards for Oil and Gas Well Drilling, Oil and Gas Well Servicing, and Oil and Gas Well Special Services.

D. Location of Supplement for Inspection and Copying

A copy of the Wyoming standards applicable to the Oil and Gas Well industries, along with approved State provisions for adoption of standards,

may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Federal Office Building, Room 1576, 1961 Stout Street, Denver, Colorado 80294; Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; Office of the Director, Federal-State Operations, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

This decision is effective December 14, 1987.

Authority: Secs. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736).

Signed the 9th day of December, 1987, in Washington, DC.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-28630 Filed 12-11-87; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 18, 1987 (52 FR 44240). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the January 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint Metal Components and Thermal Hydraulic Phenomena, December 15, 1987, Washington, DC. The Subcommittees will review: (1) The North Anna steam generator tube failure, and (2) R. L. Johnson's comments on proposed revision to acceptance criteria for the ECCS rule with respect to steam generator tube integrity.

Reliability Assurance, December 16, 1987, Washington, DC. The Subcommittee will explore the current status of equipment qualification research. Current plans for an equipment qualification risk scoping study will be presented.

Generic Items, December 16, 1987, Washington, DC. The Subcommittee will discuss with representatives from the Duke Power Company the steps involved in implementing the resolution of Generic Issues and/or Unresolved Safety Issues (USIs), the contribution to plant safety resulting from the implementation of the resolution of Generic Issues and USIs, and related matters.

Babcock & Wilcox Reactor Plants, January 5, 1988, *Postponed,* rescheduled for February 4-5, 1988.

Reactor Operations, January 5, 1988 (Tentative) (1:30 p.m.), Washington, DC. The Subcommittee will be briefed on, and discuss problems involved with, in-service testing.

Advanced Reactor Designs, January 6, 1988, Washington, DC. The Subcommittee will review and comment on the draft Commission paper that will be prepared by the NRC Staff regarding the severe accidents and containment issues for the DOE-sponsored advanced reactor designs.

TVA Organizational Issues (Tentative), January 12-13, 1988, Chattanogga, TN. The Subcommittee will continue its review of the safety issues associated with the TVA management reorganization and the Sequoyah restart.

Structural Engineering, January 20, 1988, Albuquerque, NM. The Subcommittee will review the results of the concrete containment model test.

Themal-Hydraulic Phenomena, January 21 and 22, 1988, Los Alamos, NM. The Subcommittee will review the documentation developed by LANL and INEL to support the TRAC PF1 and RELAP-5 Thermal-Hydraulic Codes pursuant to the RES CSAU requirements.

Waste Management, January 21 and 22, 1988, Washington, DC. The Subcommittee will review the following pertinent waste management topics: *HWL* (1) Current legislative actions pertaining to the HLW program; (2) NRC's review of the 3 Site Characterization Plans; and (3) Q-List GTP. *LLW* (1) Uranium mill tailings, with surface water hydrology as an example; and (2) Revision 1 of the Standard Review Plan for shallow land burial (SLB), including engineered barriers and alternatives to SLB. *RES* (1) Groundwater/radionuclide flow (hydrology) in fractured rock; and (2) RES program overview, including: (a) legislative and regulatory requirements; (b) Radioactive Waste Management Research Program Plan for HLW-1987 (NUREG-1245), and FOR LLW-1987 (NUREG-1246); (c) current research plans for FY 1988 and FY 1989 in view of proposed budget cuts; and (d) National Research Council's critique of the NRC HLW and LLW research programs, and the RES Staff's response.

Occupational and Environmental Protection Systems, January 27 and 28 (a.m. only), 1988, Washington, DC (Igne). The Subcommittee will review: (1) The "hot particle" problem, (2) the new revision to the definition of an "extraordinary nuclear occurrence", (3) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (4) the emergency planning rule, (5) the control room habitability report by ANL, and (6) other related matters.

Decay Heat Removal Systems, January 28, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45: "Shutdown Decay Heat Removal Requirements."

Joint Scram Systems Reliability and Core Performance, January 29, 1988, Washington, DC. The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients) in general, and ATWS analyses in particular.

TVA Organizational Issues (Tentative), February 2-3, 1988 (*alternate date* for the January 12-13th meeting), Chattanooga, TN. The Subcommittee will continue its review of the safety issues associated with the TVA management reorganization and the Sequoyah restart.

Babcock & Wilcox Reactor Plants (Tentative), February 4-5, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during this summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V Stello, EDO.

Auxiliary Systems, February 9, 1988 (8:30 a.m.–12:00 noon), Washington, DC. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System design, and (3) criteria being used by the NRC Staff to review the Chilled Water System design. To facilitate this discussion, some members of the Subcommittee will tour the Shearon Harris plant to look at the Chilled Water System design at that plant.

Reliability Assurance, February 9, 1988 (1:00 p.m.), Washington, DC. The Subcommittee will discuss items regarding testing performed on Containment Isolation valves and a test plan for the isolation of high energy line breaks. The final version of R.G. 1.100, Rev. 2, Seismic Qualification of Electrical and Mechanical Equipment for Nuclear Power Plants, will be reviewed.

Human Factors Seminar, February 10, 1988 Washington, DC. The Subcommittee will be briefed on topics of interest regarding Human Factors.

Diablo Canyon, February 23–24, 1988 (Tentative), San Francisco, CA. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Auxiliary Systems, March 9, 1988 Washington, DC. The Subcommittee will discuss the final report on the Fire Risk Scoping Study being performed by Sandia National Laboratories for the NRC.

Metal Components, Date to be determined (January), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping and other topics related to Subcommittee activities.

Improved Pressurized Water Reactor Designs. Date to be determined (February), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives and the NRC Staff regarding the PRA and WAPWR (RESAR SP/90) design.

Containment Requirements, Date to be determined (February/March), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48).

Severe Accidents, Date to be determined (February/March) (Tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Improved Pressurized Water Reactor Designs, Date to be determined (March), Washington, DC. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Containment Requirements, Date to be be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document, on containment performance and improvements (all containment types).

Decay Heat Removal Systems, Date to determined (April/May), Washington, DC. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Improved Pressurized Water Reactor Designs, Date to be determined, (April/May), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

ACRS Full Committee Meeting

January 7–9, 1988—Items are tentatively scheduled.

*A. *Advanced Boiling Water Reactor (Open)*—Briefing regarding design features of GE proposed advanced BWR.

*B. *Operating Experience at Nuclear Facilities (Open/Closed)*—Briefing and discussion of recent operating incidents and events at nuclear power plants.

*C. *Equipment Qualification (Open)*—Briefing and discussion regarding proposed equipment qualification program for nuclear power plants.

*D. *Leak-Before-Break Requirements (Open)*—Briefing and discussion regarding proposed final revision of 3.6.3 of the NRC Standard Review Plant, Leak-Before-Break Evaluation Procedures.

*E. *Nuclear Industry Initiatives (Open)*—Briefing by representatives of the nuclear industry regarding industry initiatives to improve the operation and regulation of reactors.

*F. *AEOD Activities (Open)*—Discussion regarding items of mutual interest regarding activities of the NRC Office for Analysis and Evaluation of Operational Data.

*G. *Safety Implications of Control Systems (Open)*—Discuss proposed ACRS comments/recommendations regarding proposed NRC staff resolution of this unresolved safety issues (USI A–47).

*H. *Seismic Design Criteria (Open)*—Briefing and discussion regarding proposed NRC final resolution of this unresolved safety issue (USI A–40).

*I. *ACRS Subcommittee Activities (Open)*—Report regarding status of assigned subcommittee activities including inservice testing of nuclear power plant systems/components, reliability assurance, and steam generator tube integrity.

*J. *New ACRS Members (Closed)*—Discuss qualifications of candidates proposed for consideration as members of the ACRS.

*K. *ACRS Future Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*L. *Renewal of Nuclear Power Plant Licenses (Open)*—Briefing and discussion of proposed NRC policy statement regarding renewal of nuclear power plant licenses.

February 11–13, 1988—Agenda to be announced.

March 10–12, 1988—Agenda to be announced.

Date: December 8, 1987.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 87–28649 Filed 12–11–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Fermi-2; Issuance of Final Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated May 7, 1987, filed by the Government Accountability Project (Petitioner) on behalf of the Safe Energy Coalition of Michigan and the Sisters, Servants of the Immaculate Heart of Mary Congregation. The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) take certain actions with regard to an "employee concern" program of the Detroit Edison Company (Licensee) entitled the SAFETEAM program at the Fermi-2 plant, or alternatively modify, suspend, or revoke the facility's operating license. The actions the Petitioner requested the NRC to take with regard to the SAFETEAM program include (1) taking possession of all the SAFETEAM files, reviewing the allegations for potential safety-related deficiencies, and making these concerns public; (2) requiring that all SAFETEAM allegations be processed by the Licensee in accordance with 10 CFR Part 50, Appendix B; and (3) requiring that all Licensee employees be fully informed about the SAFETEAM program before they choose to submit information to the SAFETEAM or to the NRC.

As bases for these requests, the Petitioner asserts (1) that workers who turned over allegations to the SAFETEAM were harassed, fired or otherwise discriminated against; (2) that the Office of Investigations (OI) did not analyze the safety significance of the

investigative shortcomings of the SAFETEAM program; (3) that the SAFETEAM program was not being properly implemented and was ineffective; (4) the SAFETEAM interviewers are inadequately trained; (5) that deficiencies reported to the SAFETEAM are not recorded on nonconformance reports and are not evaluated by the site quality assurance/quality control staff; and (6) that there is no quality check or accountability for the SAFETEAM program.

The Director has now determined that the Petitioner's request should be denied for the reasons set forth in the "Director's Decision Under 10 CFR 2.206" (DD-87-19), which is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the local Public Document Room for the Fermi-2 plant at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 8th day of December 1987.

For the Nuclear Regulatory Commission.

John J. Stefano,

Project Manager, Project Directorate III-1. Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 87-28648 Filed 12-11-87; 8:45 am]

BILLING CODE 7590-01-M

Correction of Notice for Florida Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

On November 27, 1987, the Commission published in the **Federal Register** (52 FR 45413) a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing for the Florida Power Corporation, Crystal River 3 Nuclear Generating Plant. The notice involved a proposed amendment which would change the surveillance requirement for the emergency diesel generator loading to reflect the diesel generator ratings and the present total load they would be expected to carry. In addition, the requirement for verifying the auto-connected loads would be updated to reflect the present loads.

Due to the exigent nature of the amendment request, the notice allowed the public 15 days for comment and until December 14, 1987 to file a petition for leave to intervene on the proposed amendment. However, the public should have been allowed 30 days to file a petition for leave to intervene on the proposed action.

Therefore, the Commission is correcting the notice published on November 27, 1987, by allowing the public until December 28, 1987 to file a petition for leave to intervene on the proposed amendment.

Dated at Bethesda, Maryland, this 9th day of December, 1987.

For the Nuclear Regulatory Commission.

John C. Schiffgens,

Project Engineer, Project Directorate II-2 Division of Reactor Project-I/II Office of Nuclear Reactor Regulation.

[FR Doc. 87-28647 Filed 12-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Commonwealth Edison Company (CECo, the licensee) for Quad Cities Nuclear Power Station (QCNPS), Unit 1, located in Rock Island County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would delete certain license conditions and revise Technical Specification (TS) to incorporate new Cycle 10 reload fuel operating limits, expand operating domains (including operation with equipment out of service), and change jet pump surveillance core flow evaluation methodology. Proposed TS changes specifically related to the Cycle 10 reload fuel operating limits and analyses include: (a) Revising the maximum allowable Linear Heat Generation Rate (LHGR) to be fuel type specific, and establishing a LHGR limit for the new GE8x8EB reload fuel, (b) adding Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limit curves for the new reload fuel, (c) increasing the Rod Block Monitor (RBM) setpoint, and (d) revising the Minimum Critical Power Ration (MCPR) limit and associated 20% insertion scram time value. Other TS and license condition changes in this amendment that resulted from analyses performed by GE for CECo to expand the unit operating region, and allow for operation with certain equipment out-of-service including the following: (e) deletion of existing License Condition requirements for Single Loop Operation (SLO) and incorporation of similar SLO requirements into the TS, (f) change the analyzed operating region to include increased core flow (ICF) and feedwater temperature (FTR), (g) revision of the Automatic Pressure Relief Subsystem TS to require action only when two or more relief valves are inoperable, and (h) deletion of the license operating restriction for coastdown to 40% power and coast down with off-normal feedwater (FW) heating.

Concurrent with the aforementioned TS changes, several administrative and editorial revisions were proposed for continuity. Furthermore, applicable TS bases and references were updated to reflect new information, fuel type, analyses, computer models, operating domains, and Limiting Conditions of Operation (LCOs).

These revisions to the license of QCNPS, Unit 1, would be made in response to the licensee's application for amendment dated September 18, 1987, as supplemented October 13, 1987, and clarified November 25, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed an amendment of Facility Operating License DPR-29 which would revise certain license conditions and TS in order to provide for Cycle 10 operation of QCNPS, Unit 1.

The Unit 1 Reload 9/Cycle 10 replacement reactor fuel is of the GE8x8EB extended burnup fuel design, which has some different mechanical and nuclear features than the Cycle 9 fuel. Although this fuel type has not been employed at QCNPS before, Reload 9 is still considered a normal reload with no unusual core features or characteristics. The GE8x8EB fuel design described in Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel (GESTAR II), has been reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8x8EB fuel was recently approved for other non-CECo plants (e.g., Fitzpatrick, Peach Bottom, Limerick, and Millstone). This license amendment will establish the necessary critical operating limits, defiend operating domains, and surveillance requirements to assure safe operation of QCNPS, Unit 1 with the

new Cycle 10 reactor core fuel configuration.

Environmental Impacts of the Proposed Action

By letter dated September 18, 1987, as supplemented October 13, 1987, the licensee provided transient and accident safety analyses using approved methods to bound all normal and abnormal conditions of Cycle 10 operation for Unit 1.

The licensee's reload submittal analysis was performed by GE using a new and advanced GEMINI licensing methodology to technically justify Cycle 10 operation. This methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of this reload submittal were transient and accident analyses for the following Equipment Out-of-Service and Extended Operating Domain operating modes (EOOS/EOD): ICF, FW heater(s) out-of-service, FTR, relief valve out-of-service (RVOOS), and SLO. All core wide transients and Emergency Core Cooling System (ECCS) analyses were performed with the most restrictive RVOOS. This reload package, therefore, incorporates additional changes to allow unrestricted operation with only one RVOOS.

GE has reanalyzed the design basis Loss of Coolant Accident (LOCA) event at QCNPS with an improved ECCS computer code package called SAFER/GESTR-LOCA Application Methodology. Results from this analysis of postulated plant LOCAs was provided by CECo in accordance with NRC requirement which demonstrated that QCNPS conforms with the ECCS and Peak Cladding Temperature (PCT) acceptance criteria of 10 CFR 50.46 and Appendix K. Consequently, SAFER/GESTR-LOCA loss of Coolant Analysis (NEDC-31345P dated July 1987) is now considered the primary ECCS licensing basis reference for QCNPS.

Confirmation of jet pump integrity and operation by surveillance methodology based upon a core plate delta P-core flow relationship is more accurate than the presently required power-core flow relationship (Unit 2 has already had this change approved).

The Commission has reviewed these analyses and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plants effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of Quad-Cities Nuclear Power Station Units 1 and 2" dated September 1972, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of reload activities and subsequent plant operations allowed by this action will not be adversely different when compared to previous operating and reload cycles. CECo is committed to operate QCNPS in accordance with standards are regulations to maintain occupational exposures levels "as low as reasonably achievable".

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated September 1972 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's requests of September 18, 1987, October 13, 1987 and November 25, 1987; and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated September 18, 1987, as supplemented October 13, 1987, and clarified by November 25, 1987, and the Final Environmental Statement for QCNPS dated September 1972; which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC 20555 and at the Dixon Public Library, 221 Hennepin Ave., Dixon, Illinois 61021.

Dated at Bethesda, Maryland this 9th of December, 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 87-28783 Filed 12-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-60755; ASLBP No. 87-551-02-SP]

Alfred J. Morabito, Senior Operator License for Beaver Valley Power Station, Unit 1; Oral Presentation

December 8, 1987.

Before Administrative Judge: Charles Bechhoefer.

Notice is hereby given that, in accordance with the Presiding Officer's Memorandum and Order dated November 24, 1987 (LBP-87-31) and the Order dated December 7, 1987, an oral presentation in this informal proceeding involving an application for a senior operator's license at the Beaver Valley Power Station, Unit 1 will be held on Monday, February 22, 1988, commencing at 9:30 a.m., at the William S. Moorhead Federal Building, 1000 Liberty Avenue, GSA Conference Room 2102, Pittsburgh, Pennsylvania. (To the extent necessary, the presentation will continue on Tuesday, February 23, 1988.)

Members of the public are invited to attend this oral presentation. At the outset of the presentation on February 22, 1988, at 9:30 a.m., the Presiding Officer will entertain oral limited appearance statements from members of the public, as provided by proposed 10 CFR 2.1211. Requests to make oral statements should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, 1717 H Street NW., Washington, DC 20555. A copy of any such request should also be served on the Presiding Officer.

Dated at Bethesda, Maryland this 8th day of December, 1987.

Presiding Officer.

Charles Bechhoefer,

Adminstrative Judge.

[FR Doc. 87-28650 Filed 12-11-87; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Business Meeting and Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: December 21 and 22, 1987. Business Meeting—December 21, beginning at 10:00 a.m. Hearings—December 21, beginning at 2:00 p.m. and December 22, beginning at 9:30 a.m.

ADDRESS: Room 124 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss and vote on Air Traffic Control and related issues, and other matters. The purpose of the hearings is to hear witness testimony relating to the Privatization of Education and contracting issues. The business meeting and the hearings are opened to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87-28707 Filed 12-10-87; 10:44 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form 2-E, File No. 270-222
Form 13F, File No. 270-22
Rule 24f-1, File No. 270-130
Rule 24f-2, File No. 270-131
Rule 6e-2, File No. 270-177
Rule 18f-1, File No. 270-187
Rule 17a-7, File No. 270-238
Rule 19a-1, File No. 270-240
Rule 30a-1, File No. 270-210
Rule 30b2-1, File No. 270-213
Rule 17a-8, File No. 270-225
Form N-8A, File No. 270-135
Form N-8F, File No. 270-136
Rule N-17D-1, File No. 270-231
Form N-23C-1, File No. 270-230
Form N-54A, File No. 270-182
Form N-54C, File No. 270-184
Form N-6f, File No. 270-185

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form 2-E under the Securities Act of 1933 (17 CFR 239.201) and Form 13F under the Securities Exchange Act of 1934 (17 CFR 249.325).

Form 2-E is the form that a small business investment company that has engaged in a limited offering of its securities uses to report semi-annually the progress of the offering, including the number of shares sold. Each repondent spends approximately 10 hours, annually, reporting on Form 2-E.

Form 13F is used by certain large investment managers to report quarterly with respect to certain securities over which they exercise investment discretion. Each report takes about 24.6 hours to fill out.

Notice is also given that the Securities and Exchange Commission has submitted for extension of OMB approval the following forms and rules under the Investment Company Act of 1940:

Rule 24f-1 (17 CFR 270.24f-1) permits certain investment companies that have inadvertently sold more shares than are registered to register the oversold shares under the Securities Act of 1933. The reporting burden under the rule is about 2 hours per respondent.

Rule 24f-2 (17 CFR 270.24f-2) allows certain investment companies to register their shares under the Securities Act of 1933 without specifying at the time of registration the total number of shares to be registered. Registrants spend about 1.9 hours per response.

Rule 6e-2 (17 CFR 270.6e-2) grants investment companies offering scheduled premium variable life insurance contracts exemptions from the Investment Company Act of 1940. The rule requires a reporting burden of about 41.7 annual burden hours per respondent.

Rule 18f-1 (17 CFR 270.18f-1) enables a registered open-end management investment company that may redeem its securities in kind to elect to commit to make limited cash redemptions without violating section 18(f) of the Investment Company Act of 1940. A response takes approximately 1 hour.

Rule 17a-7 (17 CFR 270.17a-7) requires various records to be kept in connection with certain purchase or sale transactions between registered investment companies and certain of their affiliates. Each recordkeeper spends about 1 hour, annually, meeting this requirement.

Rule 19a-1 (17 CFR 270.19a-1) requires a written statement to accompany certain dividend payments. A respondent would probably spend about .25 hours, annually, meeting this requirement.

Rule 30a-1 (17 CFR 270.30a-1) requires every registered management investment company to file a semi-annual report with the Commission. The burden of meeting the requirement of this rule is the burden of filing Form N-SAR, the reporting form prescribed under the rule. Approval for Form N-SAR has been given separately.

Rule 30b2-1 (17 CFR 270.30b2-1) requires the filing with the Commission of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its shareholders. Approval for requiring the reports, themselves, has been given separately. The burden of filing the reports is negligible.

Rule 17a-8 (17 CFR 270.17a-8) exempts certain mergers or consolidations involving investment companies from section 17(a) of the Investment Company Act of 1940. The rule requires approximately 1.5 hours of recordkeeping per company involved in such a merger or consoldiation.

Form N-8F (17 CFR 274.218) is the form prescribed for use by certain registered investment companies requesting orders of the Commission declaring that they have ceased to be investment companies. The form takes about 6 hours to fill out.

Form N-8A (17 CFR 274.10) is used by companies to notify the Commission of their registration under the Investment Company Act of 1940. The form takes about 1 hour to fill out.

Form N-17D-1 (17 CFR 274.200) is used by small business investment companies and banks affiliated therewith to report any loan, advance of credit to, or acquisition of securities or property of a small business concern or any agreement to do any of the foregoing. The annual burden of filling out the form is approximately 5 hours per response.

Form N-23C-1 (17 CFR 274.201) is a form on which closed-end investment companies report repurchases of their own securities. The form takes about 1 hour to fill out.

Form N-54C (17 CFR 274.54) is used to notify the Commission that a company withdraws its election to be regulated as a business development company. The annual burden is about 1 hour per respondent.

Form N-54A (17 CFR 274.53) is the notification of election to be regulated as a business development company.

The annual burden is about .5 hours per respondent.

Form N-6F (17 CFR 274.15) permits a company that has lost its exclusion from the Investment Company Act of 1940 because it intends to make a public offering as a business development company, but is not ready to file Form N-54A, to remain exempt from that Act for up to 90 days. The form takes about .5 hours to fill out.

Comments should be submitted on OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

December 8, 1987.

[FR Doc. 87-28671 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25176; File No. SR-Amex-87-30]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Suspension for Non-Payment of Disciplinary Fines

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 17, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms or Substance of the Proposed Rule Change

The Exchange proposes to provide for the summary suspension from association with a member or member organization of employees of a member or member organization who fail to pay disciplinary fines.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to provide for the summary suspension from association with a member or member organization of employees of a member or member organization who fail to pay disciplinary fines levied against them. The Exchange Constitution provides for the summary suspension of members or member organizations for non-payment of disciplinary fines assessed against them. There is, however, no similar provision applicable to employees of members or member organizations.

The Exchange's inability to summarily suspend member or member organization employees who fail to pay disciplinary fines undermines the effectiveness of the Exchange's disciplinary sanctions, since it requires the Exchange to devote legal resources to unnecessary enforcement activities. In order to respond to a person's refusal to pay a fine, the Exchange must commence a second disciplinary proceeding, with all of the formalities of a hearing and with full appeal procedures. Throughout this process, the respondent could continue in the organization's employment even though he had completely disregarded the decision of an Exchange Disciplinary Panel.

The Exchange therefore proposes to amend Rule 345 to provide for the summary suspension from association with a member or member organization of any member or member organization employee who fails to pay a disciplinary fine within thirty (30) days after it becomes due. Summary action would be taken only after any appeal of the original sanction had been exhausted and the decision had become final.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(6) in particular in that it is intended to assure that persons associated with member or member organizations of the Exchange shall be appropriately disciplined for violation of the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR-Amex-87-30 and should be submitted by January 4, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1987.
Jonathan G. Katz,
Secretary.
[FR Doc. 87-28621 Filed 12-11-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25173; File No. SR-CBOE-87-47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Retail Automatic Execution System ("RAES") in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

The following describes eligibility criteria for members to participate as contra-brokers on RAES in equity options for a six-month pilot program:

RAES eligibility in Equity Options

1. Any Exchange member who has registered as a market-maker is eligible to log onto RAES in an equity option class, so long as the following requirements are met.

2. The market-maker must log onto the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. [Consistent with Exchange rules and interpretations thereof] *Unless exempted by the Floor Procedure Committee,* only one participant in a joint account may use the joint account for trading in a particular option class at one time on RAES in regular trading.

4. *Unless exempted by the Floor Procedure Committee,* a market-maker may log onto RAES in a particular equity option only in person and may continue on the system only so long as he is present in that trading crowd. *Accordingly, absent exemption from the foregoing limitation,* [A] *a* member may not remain on the RAES system and must log off of the system when he has left the trading crowd, unless the departure is for a brief interval.

5. *In such option classes designated by the Floor Procedure Committee, any market-maker who logs onto RAES must log onto the RAES system in that option class whenever he is present in that trading crowd until the next expiration.*

[5] *6.* Failure of a member to abide by the [these eligibility] *the foregoing* requirements [; including but not limited to logging off RAES upon leaving the trading crowd] will be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the [Market Performance Committee] *Floor Procedure Committee,* including but not limited to suspending a member's eligibility for participation on RAES.

[6. In unusual market conditions, the Exchange may grant exemption relief from these provisions.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change is an amendment to the standards of market-maker eligibility to participate in RAES in equity options. The standards were originally set forth in SR-CBOE-86-22, approved in Exchange Act Release No. 23591 (September 4, 1986), 51 FR 32710 (September 15, 1986).

The amendments are as follows: There is no change in paragraphs 1 or 2. Paragraph 3 has been amended to allow the Floor Procedure Committee to exempt market-makers from the limit on the use of joint account to one participant in that account. Under existing Exchange rules and interpretations thereto, the Floor Procedure Committee already possesses the authority to allow the multiple representation of a joint account. Thus, the revision of paragraph 3 is consistent with the original provision, but clarifies the Committee's authority by so stating in the text.

Paragraph 4 has been amended to state that the Floor Procedure Committee may exempt a market-maker from participating in RAES in an equity option class only while he is present in the trading crowd. Original paragraph 6 afforded the Exchange the general authority to grant exemptive relief from the rule's provisions. By this amendment, the exemptive authority stated in the appropriate paragraphs is delegated to the Floor Procedure Committee.

Paragraph 5 is new, providing that the Floor Procedure Committee may identify option classes where market-makers who log onto RAES will be required to participate in RAES while in person until the next expiration. The pilot of RAES in equity options has disclosed that in some instances, a very small number of market-makers are to logged onto RAES at expiration, typically a time of larger volume and thus greater risk in being on the system. The Exchange believes that this new provision will assume that there will be an adequate number of market-makers on the system throughout an expiration cycle, and that those market-makers who are willing to log onto RAES prior to expiration will be logged onto the system at expiration. Of course, if this relief is insufficient, the Committee may use its exemptive authority to increase the pool of available market-makers.

Advance notice of invocation of the obligation to remain on the system under Paragraph 5 will be given so that no market-maker will have logged onto RAES only to learn after the fact that he has incurred an obligation to remain on the system.

The Exhange believes that the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change will allow for the continuing availability of RAES for public investors with reasonable and fair market-maker participation as contra-brokers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 4, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 4, 1987

[FR Doc. 87-28622 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25175; File No. SR-NSCC-87-12]

Filing; National Securities Clearing Corp.; National Securities Clearing Corporation's ("NSCC") Rules Concerning Mutual Fund Membership.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1987 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules and procedures to establish: (1) The new membership category for broker-dealers that only use Fund/SERV, and (2) the new Fund/SERV Clearing Fund contribution requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC began operation of its Mutual Fund Settlement, Entry and Registration Verification ("Fund/SERV") service in March, 1986. Fund/SERV has continued to grow over the last 18 months and there currently are 27 broker-dealers and 18 mutual fund distributors participating in the system. As Fund/SERV has grown and matured, NSCC has been examining whether there are broker-dealers who currently are not NSCC members who might benefit from participation in Fund/SERV, as well as whether there are obstacles to their joining NSCC that NSCC could address.

NSCC also has been examining the risks posed to NSCC by Fund/SERV and the manner in which NSCC protects against those risks. In particular, NSCC has been examining the current basis for calculating Clearing Fund requirements based on Fund-SERV activity. As a result of these examinations, NSCC has determined to establish a special limited category of membership for broker-dealers who use only Fund/SERV and to reformulate the method by which NSCC calculates Fund/SERV Clearing Fund requirements.

With respect to the Clearing Fund requirements, Fund/SERV activity currently is assessed for Clearing Fund purposes at the rate of 2 1/2% of gross debits and credits, or 5% of gross debits, whichever is higher. This is the standard formula for non-Continuous Net Settlement activity, and is used to calculate Clearing Fund requirements for a number of activities at NSCC, including "guaranteed" services where NSCC will guarantee to participants settlement credits even if the contra side to the transaction defaults. Fund/SERV, however, is a non-guaranteed service. If a fund or broker-dealer fails, NSCC will seek to reverse the payment made to the *contra* side. NSCC will incur a loss only if the *contra* side is unable to repay the credit, a so-called "double default."

Because the risk of a double default is significantly less than the risk of a single default in a guaranteed service, NSCC is proposing a new Fund/SERV Clearing Fund requirement, both for full-service members and for broker-dealers who may join NSCC solely to use Fund/SERV under the proposed new membership category ("Fund/SERV Broker-Dealers"). The new requirement would be one of three specific dollar amounts, based on the maximum size of debits a broker-dealer can have with each individual fund group ("debit limits").[1] The Clearing Fund requirement will be $5,000 and $10,000 for debit limits of $100,000 and $500,000, respectively, and $20,000 if there is no debt limit.

If NSCC suffers a loss or liability resulting from Fund/SERV, NSCC first would recover that loss from a member's Fund/SERV deposit. If that were insufficient to cover the loss, NSCC would follow its current loss-recovery rules and procedures, *i.e.*, first utilize retained earnings, then the aggregate Fund/SERV deposits, and, finally, the remainder of the Clearing Fund.[2] In

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[1] Debit limits apply with respect to debits with each Fund/SERV Member (fund group) since NSCC's risk of loss is that the broker-dealer and each individual Fund/SERV Member default. The limit is not based on total Fund/SERV debits since the risk of a broker-dealer and multiple fund groups defaulting simultaneously is even more remote than a double default.

[2] For a member who utilizes services other than Fund/SERV NSCC, pursuant to the provisions of NSCC Rule 4, would look to the remainder of the defaulting member's Clearing Fund deposit to cover the loss after it exhausts the Fund/SERV deposit and before it took any other action.

addition to changes to the Clearing Fund, NSCC is proposing other changes to establish the new category of Fund/SERV Broker-Dealers. First, a Fund/SERV Broker-Dealer's maximum liability to the Corporation would be limited to its current Clearing Fund requirement and its Clearing Fund deposit could not be used to satisfy other than Fund/SERV losses or liabilities. In addition, there is a shortened Membership questionnaire being proposed that relates only to Fund/SERV activity and NSCC will take steps to streamline its internal membership processing of Fund/SERV Broker-Dealer applicants.[3] No changes, however, are being proposed with respect to NSCC's basic broker-dealer membership requirements or surveillance and compliance procedures.

NSCC believes that the proposed Fund/SERV Clearing Fund requirements and separate limited-use Fund/SERV Eroker-Dealer membership category will enhance the Fund/SERV service and encourage greater participation in a centralized settlement system for mutual fund transactions. The proposal accordingly will promote the prompt and accurate clearance and settlement of securities transactions and will not adversely effect NSCC's ability to safeguard securities and further within its custody or control; thus, the proposal is consistent with the provisions of the Securities Exchange Act of 1934, as amended ("Act").

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 4, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 4, 1987.

[FR Doc. 87-28623 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25177; File No. SR-NYSE-87-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange Relating to Amendments to NYSE Rule 124 To Modify Pricing Procedures for Standard Odd-Lot Market Orders

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 13, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to amend NYSE Rule 124 to modify its pricing procedures for standard odd-lot market orders.[3] The proposal amends the pricing procedure by permitting standard odd-lot market orders to be executed at a price based on the prevailing NYSE quote at the time the order reaches the system designated to price odd-lot orders.

Notice of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 24783; August 7, 1987) and by publication in the **Federal Register** (52 FR 30474; August 14, 1987). No comments were received regarding the proposal.

In its filing, the NYSE indicated that the proposed amendments to the odd-lot rules were intended to simplify and make more efficient the exchange system for executing, processing, and reporting odd-lot orders. Under the existing system, standard odd-lot market orders [4] were routed to the specialist via the Exchange Automated Pricing and Reporting System (APARS). The orders were then held in the system until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the round-lot, plus or minus an odd-lot differential. Pursuant to the amendments, the standard market odd-lot order will not have to wait for a triggering round-lot transaction, but instead will receive an execution based on the prevailing NYSE quote,[5] with no odd-lot differential charged on the order. Further, the APARS system will be eliminated, and standard odd-lots will be routed through the Exchange's Limit (LMT) system. In instances in which the NYSE quote is unavailable or unrealiable (*e.g.* when the quote is non-firm), standard odd-lots will receive a price equal to the last NYSE round-lot sale, or in issues which are illiquid and

[3] Other minor conforming amendments to the Rules are proposed to establish this new membershp category, such as specific references to this category in Rule 2 and specifying that these new members will not need to join a securities depository.

[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1986).

[3] On August 27, 1987, the NYSE filed an amendment to the proposal, requesting partial accelerated approval of the filing to permit the Exchange to implement, for testing purposes, the odd-lot pricing system at one specialist post. *See* letter from Anne E. Allen, Vice President, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated August 26, 1987. The Commission granted partial approval of the filing, permitting the limited use of the system for testing purposes pending a final resolution of the substance of the filing. *See* Securities Exchange Act Release No. 24918 (September 14, 1987), 52 FR 35338.

[4] Standard odd-lot market orders are orders of less than a unit of trading (usually 100 shares) to purchase, sell, or sell short, which carry no further qualifying notations.

[5] By pricing the odd-lot market order off the quote, market orders to buy get an execution at the offer price, market orders to sell get an execution at the bid.

the last sale is not reflective of the current market, the order will be executed by the specialist at a price deemed appropriate under prevailing market conditions. These orders also will be executed without a differential.

Basically, odd-lot limit order executions will be unchanged by the amendments. As currently provided in Rule 214, odd-lot limit orders will be executed at the penetrated sale price sale price, plus or minus any differential. Marketable limit orders wil also continue to be processed in the same manner as odd-lot limit orders, with a differential being charged. Marketable limit orders placed prior to the opening will receive the opening price, plus or minus the differential. Market orders placed prior to the opening will also receive the opening price, however, no differential will be charged on the market orders.

The amendments to Rule 124 will also modify the processing and settlement of NYSE odd-lot orders. Subsequent to execution, all orders will be included in specialist inventory accumulations. A new odd-lot reporting system, APARS II, will provide comparison reports and send a direct input of compared trades to the appropriate clearing systems. Orders delivered through the LMT system will also receive the existing specialist ½ point error guarantee.[6]

In general, the Commission finds that the proposed amendments to the NYSE odd-lot pricing system are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the amendments are consistent with section 6(b)(5) of the Act,[7] in that they should facilitate the execution and accurate reporting of odd-lot transactions. It is also anticipated that the implementation of the APARS II system will result in improvements in the clearance and settlement of odd-lot transactions. Further, by pricing an order off the current quote instead of subsequent transaction, the order should receive a more timely execution at a price which may be more reflective of the current NYSE market. However, the proposed pricing formula, which will use the NYSE quote instead of the Intermarket Trading System (ITS) best bid or offer, represents a longstanding divergence or opinion between the Commission and the Exchange. The Commission continues to be concerned that using the NYSE quote as a pricing reference point will, at times, result in the execution of customer orders at less than the best available price. This issue has been raised previously in connection with the processing of round-lot orders through the NYSE SuperDot system. Round-lot order routed through the SuperDot system receive a reference price (at this tie, the NYSE best bid or offer) upon entry.[8] If the specialist does not report a manual execution during a predetermined timer period (either two or three minutes), the order will execute automatically at the assigned reference price.[9] A study by the NYSE estimated that these timed orders receive a price equal to the ITS best bid or offer 85% of the time.[10]

Without commmenting at this time on the issue as it pertains to SuperDot, it is important to note that there is a basic difference between the proposed SuperDot and odd-lot pricing systems. As the Exchange noted, in over 90% of SuperDot orders, the order is filled on the floor, thereby minimizing the fact that the NYSE quote may be inferior to the ITS quote up to 15% of the time. In the derivately priced odd-lot pricing system, however, that opportunity for an improved execution does not exist, thereby making an inferior execution more likely.[11] The Exchange has argued that the elimination of the differential, which is traditionally charged on all odd-lot orders, will compensate for any inferior pricing of standard odd-lot market orders that is the result of the use of the NYSE quote. We recognize that the improved efficiencies and reduced transaction costs may result in improved execution of customer orders. Therefore, the Commission has decided to approve the odd-lot pricing aspect of the proposed amendments on a two-year pilot basis. We, however, continue to be commited to ensure that odd-lot orders receive the best price available. Accordingly, during the term of the pilot, the Commission has asked the NYSE to analyze the difference in executions between using the ITS best bid or offer and the NYSE quote without the differential. Specially, the Commission is interested in whether customers generally are receiving a better execution, both in terms of price and time, using the NYSE system.[12] The Commision also is interested in the feasibility of implementing the pricing system using the ITS best and no differential. The NYSE has agreed to report back to us by June 1988 on the operational capability of instituting an odd-lot pricing system using the ITS best. Further, absent compelling reasons, if SuperDot becomes fully effective in the intervening period with the ITS best as its reference price, NYSE will be required to conform its odd-lot system to the SuperDot pricing system within a reasonable period of time.

The Commission finds that the proposed amendments, with the inclusion of the pilot program on the pricing system, are consistent with the requirements of the Act, and specifically section 6 and the rules and regulations thereunder applicable to a national securities exchange. Consistent with section 6(b)(5), the new odd-lot system should result in more efficient odd-lot transactions, and also should assist in the prompt and accurate clearance and settlement of transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 7, 1987.

[FR Doc. 87-28625 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* NYSE Rule 123A.47. The ½ point error guarantee pertains to orders routed through exchange automated systems that receive erroneous executon reports. According to the rule, erroneous reports sent by the specialist through the system to subscribing member organizations shall be binding if the report price is no more than ½ point away from the execution price or if the subscribing member does not request a correction by the third business day. the amendments provide specifically that all standard odd-lot market and limit orders processed through the LMT system will receive that guarantee.

[7] 15 U.S.C. 78f(b)(5).

[8] The use of the NYSE quote was approved by the Commission on a pilot basis. *See* Securities Exchange Act Release No. 22498 (October 2, 1985) 50 FR 41082.

[9] The NYSE trading crowd is extremely active, therefore a significant majority of SuperDot routed orders are executed within the timer period and do not receive an execution based on the reference price. The NYSE estimated that in 1986, 92% of all SuperDot orders were executed within two minutes. For the first quarter of 1987, that figure remained at 92%; for the second quarter of 1987, the figure was 94%. *See* letter from Santo Famularo, Assistant Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated October 6, 1987.

[10] *Id.*

[11] In the past, the NYSE has conceded that the ITS best bid or offer is the appropriate reference point for automated, derivately priced systems. *See* letter from Santo Famulaor, Assistant Vice President, NYSE, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated September 24, 1985.

[12] The Commission has requested the NYSE to submit this data at least 3 months prior to the expiration of the pilot to permit the Commission to make a final determination on the pricing aspects of the program.

[Release No. 34-25174; File No. SR-OCC-87-21]

Self-Regulatory Organization; Filing of Proposed Rule Change by the Options Clearing Corp.; Changes in Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on November 25, 1987, The options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation ("OCC") proposes to amend its margin requirements for non-equity ("NEO") options to provide that the minimum additional margin is the lesser of $150 or 25% of the applicable margin interval.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to correct an unintended effect of OCC's non-equity ("NEO") margin system that results in excessive margin requirements for out-of-the-money options positions in unusually volatile market conditions.

Under OCC's NEO margin system, the margin requirement or credit for each "class group" (options on the same underlying asset) equals the liquidating value of the positions in that class group, based on premium levels at the close of trading on the preceding day, increased (in the case of a negative liquidating value) or decreased (in the case of a positive liquidating value) by the "additional margin" amount for that class group.[1]

Additional margin amounts are calculated based on options price theory. OCC's margin system first calculates the theoretical liquidating value for the positions in each class group assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable "margin interval," which is the maximum one-day price movement in the underlying asset that OCC desires to protect against. Margin intervals are determined separately for each underlying asset, and are adjusted as necessary to reflect changes in volatility in the underlying markets.

The margin system then selects the theoretical liquidating value that represents the greatest decrease (where the actual liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with actual liquidating value (based on current premium levels). The difference between that theoretical liquidating value and actual liquidating value is the additional margin amount for that class group.

For deep-out-of-the-money options, the pricing model can yield an additional margin amount of zero. This occurs in the case of options for which no change in value would be predicted given a change in the value of the underlying asset equal to the applicable margin interval. In order to provide a cushion to protect against the risk of a change in value of such options, OCC's system includes a "short option adjustment," which provides a minimum additional margin requirement for all short positions. The short option adjustment was expected to provide a cushion of approximately $150.

The short option adjustment is expressed in OCC's Rules as "25% of the applicable margin interval." At the time those Rules became effective, the margin intervals were set at around 6 points, which yielded the desired margin cushion of approximately $150 per contract through the short option adjustment. During the unusual market conditions of recent weeks, however, OCC has substantially increased its margin intervals to reflect increased volatility. For example, the margin interval for the S & P 100 Index ("OEX") is currently at 20 points.[2] These increased margin intervals yield what OCC believes to be greatly excessive short option adjustments, such as $500 per contract for OEX out-of-the-money contracts.

OCC believes that such margin requirements are unwarranted for these contracts, which may be out-of-the-money by 40 points or more, and can be expected to trade, if at all, for one-eighth or one-sixteenth. A cushion of $150 would provide more than enough protection for these contracts. The options to which the short adjustment applies are those that are so far out of the money as to give rise to no expectation of movement given the assumed market volatility. A $150 additional margin requirement would provide protection for up to a 1200% or 2400% change in a premium of one-eighth or one-sixteenth point. By contrast, the $500 currently required for the OEX protects against a 4000% or 8000% change in the value of these options from the night's close to the point where variation margin could be collected the next day. While there is of course no guarantee that this amount would never be needed by OCC, it is clearly excessive as an ongoing requirement, in the absence of any reasons for concern with respect to any series or class of options. This is particularly true given that OCC recalculates and reassesses its margin needs every night, has the ability to increase margin requirements during the course of the day by calling for variation margin as appropriate, and utilizes a sophisticated system for monitoring the risk of market movements beyond the margin interval.

For these reasons, OCC proposes to amend its Rules to restore the short option adjustment to its original intended level of $150 per contract. This correction to what is, in essence, a systems error would return sorely needed funds to Clearing Members (over $100,000,000 with respect to the OEX alone) at a time when their financing capacity and liquidity are severely strained. In addition, it would remove an artificial impediment to market activity in the affected contracts, which under the current Rules has become prohibitively expensive. At the same time, the proposed rule change would in no way impair OCC's ability to require additional margin deposits for any classes or series for which greater protection is appropriate.

The proposed rule change is consistent with the requirements of section 17A of the Act in that it would further the public interest by eliminating the over-margining of out-of-the-money

[1] The NEO margin system is described in detail in File No. SR-OCC-85-21.

[2] The OEX is a particularly useful example because it is the most widely traded NEO contract and has the largest open interest in deep out-of-the-money contracts.

non-equity options, thereby returning much-needed funds to the brokerage industry and removing an impediment to market liquidity without impairing OCC's protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Many of OCC's Clearing Members have requested the margin relief provided for in the proposed rule change as a way for OCC to safely return much-needed funds to them.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 4, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 4, 1987.

[FR Doc. 87-28624 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Gull, Inc.
Common Stock, $.10 Par Value (File No. 7-0787)
Americus Trust for American Home Products
Primes (File No. 7-0788)
Americus Trust for American Home Products
Scores (File No. 7-0789)
Americus Trust for American Home Products
Units (File No. 7-0790)
Americus Trust for Atlantic Richfield
Primes (File No. 7-0791)
Americus Trust for Atlantic Richfield
Scores (File No. 7-0792)
Americus Trust for Atlantic Richfield
Units (File No. 7-0793)
Americus Trust for Bristol-Myers
Primes (File No. 7-0794)
Americus Trust for Bristol-Myers
Units (File No. 7-0795)
Americus Trust for Chevron
Primes (File No. 7-0796)
Americus Trust for Chevron
Scores (File No. 7-0797)
Americus Trust for Chevron
Units (File No. 7-0798)
Americus Trust for Du Pont
Primes (File No. 7-0799)
Americus Trust for Du Pont
Scores (File No. 7-0800)
Americus Trust for Du Pont
Units (File No. 7-0801)
Americus Trust for Eastman Kodak
Primes (File No. 7-0802)
Americus Trust for Eastman Kodak
Scores (File No. 7-0803)
Americus Trust for Eastman Kodak
Units (File No. 7-0804)
Americus Trust for GM
Primes (File No. 7-0805)
Americus Trust for GM
Units (File No. 7-0806)
Americus Trust for GTE
Primes (File No. 7-0807)
Americus Trust for GTE
Scores (File No. 7-0808)
Americus Trust for GTE
Units (File No. 7-0809)
Americus Trust for Hewlett-Packard
Primes (File No. 7-0810)
Americus Trust for Hewlett-Packard
Scores (File No. 7-0811)
Americus Trust for Hewlett-Packard
Units (File No. 7-0812)
Americus Trust for J & J
Primes (File No. 7-0813)
Americus Trust for J & J
Scores (File No. 7-0814)
Americus Trust for J & J
Units (File No. 7-0815)
Americus Trust for Merck
Primes (File No. 7-0816)
Americus Trust for Merck
Scores (File No. 7-0817)
Americus Trust for Merck
Units (File No. 7-0818)
Americus Trust for 3M
Primes (File No. 7-0819)
Americus Trust for 3M
Scores (File No. 7-0820)
Americus Trust for 3M
Units (File No. 7-0821)
Americus Trust for Phillip Morris
Primes (File No. 7-0822)
Americus Trust for Phillip Morris
Scores (File No. 7-0823)
Americus Trust for Phillip Morris
Units (File No. 7-0824)
Americus Trust for Procter & Gamble
Primes (File No. 7-0825)
Americus Trust for Procter & Gamble
Scores (File No. 7-0826)
Americus Trust for Procter & Gamble
Units (File No. 7-0827)
Americus Trust for Sears Roebuck
Primes (File No. 7-0828)
Americus Trust for Sears Roebuck
Units (File No. 7-0829)
Americus Trust for Union Pacific
Primes (File No. 7-0830)
Americus Trust for Union Pacific
Scores (File No. 7-0831)
Americus Trust for Union Pacific
Units (File No. 7-0832)
Americus Trust for Xerox
Primes (File No. 7-0833)
Americus Trust for Xerox
Scores (File No. 7-0834)
Americus Trust for Xerox
Units (File No. 7-0835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1987, written data, views and arguments

concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28672 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17125]

Application and Opportunity for Hearing; American Airlines, Inc.

Notice is hereby given that American Airlines, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under an indenture dated as of April 15, 1987 (the "April Indenture") between Company and Bank and the trusteeship of the Bank as successor trustee under an indenture dated as of December 1, 1986 (the "December Indenture") between Company and The Connecticut Bank and Trust Company, National Association ("Connecticut Bank"), as trustee, each of which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under either indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the April Indenture, the Company has issued $10,406,000 aggregate principal amount of its Equipment Trust Certificates, Series C (the "1987 Certificates"). The Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the April Indenture was qualified under the Act.

(2) Pursuant to the December Indenture, the Company has issued $35,112,000 aggregate principal amount of its Equipment Trust Certificates, Series A (the "1986 Certificates"). The Certificates were registered under the 1933 Act and the December Indenture was qualified under the Act.

(3) Connecticut Bank has advised the Company that, subject to the appointment of a successor trustee, it is resigning as trustee under the December Indenture. The Bank has advised it will accept the appointment, subject to a favorable determination by the Commission as requested in this Application.

(4) There is no default under the April Indenture or the December Indenture.

(5) The Company's obligations with respect to the 1987 Certificates and the 1986 Certificates are and will be secured under separate indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor under the April Indenture and the December Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under these Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17125, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than January 1, 1988 request in writing that a hearing be held on such matters stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28673 Filed 12-11-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17864]

Application and Opportunity for Hearing; USAir, Inc.

December 8, 1987.

Notice is hereby given that USAir, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under six indentures dated as of November 30, 1987 (the "Indentures") between Company and Bank each of which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of these indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the Indentures, the Company will issue $124,800,000 aggregate principal amount of its Equipment Trust Certificates, (the "Certificates"), Series A-F ("Series"), respectively. A Series will be issued under each Indenture in the principal amount of $20,800,000. The Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the Indentures were qualified under the Act.

(2) The Bank has advised it will accept the appointment, subject to a favorable determination by the Commission as requested in this Application.

(3) There is no default under any of the Indentures.

(4) The Company's obligations with respect to each series of Certificates are and will be secured under separate indentures by separate security interests in separate and distinct property.

(5) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17864, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than January 1, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commisson, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28674 Filed 12-11-87; 8:45 am]

BILLNG CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Systems of Records

AGENCY: Small Business Administration.

ACTION: Notice of establishment of new routine use applicable to existing system.

SUMMARY: The Small Business Administration is amending its Privacy Act System of Records to add a routine use of its Master Loan Files, System SBA 250, and Litigation and Claims Files, System SBA 220, to permit SBA to participate in computer matching programs with other federal agencies to implement Sections 5 and 10 of the Debt Collection Act of 1982.

EFFECTIVE DATES: These amendments shall become effective without further notice 30 calendar days from the date of publication unless comments are received on or before that day which would result in a contrary determination.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 permits federal agencies, such as the Small Business Administration, to offset delinquent debts against salary or other financial benefits which the debtor may otherwise be due from the federal government. To assist in the identification and location of debtors who are receiving federal benefits, the Department of Defense has developed a computer program to compare the records of creditor agencies against the records of agencies which pay salaries or other federal benefits. SBA is creating a new routine use to permit participation in such computer matches. SBA will submit records of past due accounts for matching. SBA will use the information received as the result of any matches to contact the debtors and attempt to negotiate voluntary repayments. In the event that voluntary payment is not forthcoming, SBA will then pursue salary or administrative offsets pursuant to the Debt Collection Act of 1982.

1. The Notice for System SBA 250 is amended by adding to the end of the section titled "Routine Uses of Records Maintained in the System, Including Categories of User and the Purpose of Such Uses" the following:

It shall be a routine use to provide information to another Federal agency, including the Defense Manpower Data Center of the Department of Defense, to conduct computer matching programs for the purpose of identifying and locating delinquent SBA borrowers who are receiving federal salaries or federal benefit payments. Such disclosure will only be made if the system of records indicates that the loan is at least 30 days past due or to update a previous disclosure initiated when the loan was at least 30 days past due. SBA will make the disclosures to obtain repayments of debts under the provisions of the Debt Collection Act of 1982 by voluntary repayment, or by administrative or salary offset procedures.

2. The Notice for System SBA 220 is amended by adding to the end of the section titled "Routine Uses of Records Maintained in the System, Including Categories of User and the Purpose of Such Uses" the following:

It shall be a routine use to provide information to another Federal agency, including the Defense Manpower Data Center of the Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving federal salaries or federal benefit payments. SBA will make the disclosures to obtain repayments of debts under the provisions of the Debt Collection Act of 1982 by voluntary repayment, or by administrative or salary offset procedures.

Dated: December 7, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-28675 Filed 12-11-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending December 4, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45322 R-1 & R-2

Parties: Member of International Air Transport Association.

Dated Filed: December 1, 1987.

Subject: Mid East Africa Fares.

Proposed Effective Date: January 1, 1988.

Docket No. 45323 R-1 & R-11

Parties: Member of International Air Transport Association.

Dated Filed: December 1, 1987.

Subject: Mid East/Africa—TC3 Fares.

Proposed Effective Date: January 1, 1988/April 1, 1988.

Docket No. 45333

Parties: American Airlines, Inc.

Dated Filed: December 4, 1987.

Subject: Application to American Airlines, Inc. pursuant to section 412 of

the Act for Discussion Authority with Antitrust Immunity.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 87-28653 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 4, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45318

Date Filed: November 30, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 28, 1987.

Description: Application of Argo Airlines, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations requests issuance of a new foreign air carrier permit recognizing the new owners and finding that the applicant continues to be fit willing and able properly to perform the foreign air transportation awarded in the permit.

Docket No. 45324

Date Filed: December 1, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1987.

Description: Application of Resort Air, Inc. d/b/a Trans World Express pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requesting authority to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket No. 45325

Date Filed: December 1, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1987.

Description: Application of Canadian Airlines International Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations, to transfer all permits and other authority from Pacific Western Airlines Ltd. and Canadian Pacific Airlines Limited to Canadian Airlines International Ltd.

Docket No. 45330

Date Filed: December 4, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 4, 1988.

Description: Application of Orion Lift Service, Inc. d/b/a/ Orion Air pursuant to section 401 of the Act and Subpart Q of the Regulations, for certificate of public convenience and necessity to engage in scheduled foreign air transportation between the United States and Hong Kong.

Phyllis T. Kayor,

Chief, Documentary Service Division.

[FR Doc. 87-28654 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-87-32]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 4, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A) 800 Independence Avenue Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on December 8, 1987.

Denise H. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25310	John W. Stanis	14 CFR 61.151(a)(b), 61.155(a)(b)(1) and (b)(2), and 63.37(a)(1) and (2) and (b)(1-7).	Permanent exemption to allow petitioner to: (1) have his private pilot certificate reinstated; (2) revalidate his airline transport pilot (ATP) written test retroactive to November 8, 1984; (3) determine that he is eligible to take an ATP flight test; and (4) release his flight engineer, B-727, written test taken on December 21, 1985.
25345	National Business, Aircraft Association, Inc.	14 CFR 91.191(a)(4) and 135.165(b)	To allow petitioner's members to conduct overwater operations with one long-range navigation receiver.
25403	CC Air, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to purchase goods and service from foreign original equipment manufacturers in support of petitioner's British Aerospace, Jetstream Model 3101 and Shorts SD3-60 aircraft.
21802	Sowell Aviation Co., Inc	14 CFR 141.65	An extension of Exemption No. 4551 to allow petitioner to recommend graduates of its FAA-approved certification courses for flight instructor and airline transport pilot certificates and ratings without taking the FAA written test in accordance with the provisions of Subpart D of Part 141. *GRANT, November 24, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25258, 25301, and 25332	Jet East International Airlines, et al	14 CFR 25.853(c) and 121.312(b)	To allow petitioners to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections which became effective November 26, 1987. *GRANT, November 25, 1987.*
25294	Polar International Airlines	14 CFR 121.61(d)(2)	To allow petitioner to use the services of Mr. John B. Laner as Chief Inspector (Director of Quality Control) without his meeting the experience requirements of § 121.61(d). *GRANT, November 24, 1987.*
25333, et al	Horizon Air, et al	14 CFR 121.312(b) and 25.583(c)	To allow petitioners to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. *GRANT, November 25, 1987.*
25478, 25479, and 25480	Brockway Air, Inc., et al	14 CFR 25.853(c) and 121.312(b)	To allow petitioners to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. *GRANT, November 27, 1987.*

[FR Doc. 87-28587 Filed 12-11-87; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment.

Meeting

Pursuant to section 10(a) (2) of the Federal Avisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held on January 7-8, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Ninth Meeting's Minutes, RTCA Paper No. 485-87/SC135-209 (previously distributed); (3) Review status of the RF Susceptibility problem and proposed changes to Section 20.0, Radio Frequency Susceptibility, to add test procedures for High Energy Radiated Fields (HERF); (4) Review status of Section 22.0, "Lightning Induced Transient Susceptibility;" (5) Review Section 23.0, "Lightning Induced Transient Susceptibility;" (6) Review Section 24.0, "Icing;" (7) Review First Draft of DO-160C; (8) Update Change Coordinator List; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance, is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 7, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87-28594 Filed 12-11-87; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

[Docket S-820]

Application; Lykes Bros. Steamship Co., Inc.

Lykes Bros. Steamship Co., Inc. request to exceed its contractual maximum sailing allowance on Trade Route 15-B (U.S. Gulf/South & East Africa) and to exceed its maximum privilege service allowance between the U.S. Gulf and West Africa.

Lykes Bros. Steamship Co., Inc. (Lykes) by letter dated December 8, 1987, advised that GENEVIEVE LYKES, Voyage 73, is scheduled to sail outbound from the U.S. Gulf on its Line E, Trade Route (TR) 15-B (U.S. Gulf/South & East Africa). This will be Lykes 24th sailing on TR 15-B in 1987. Due to cargo demands in this market as well as previous commitments to shippers, Lykes feels the need to schedule at least two more sailings on this trade route prior to December 31.

Lykes' Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451 stipulates a maximum of 24 sailings per year on TR 15-B. Lykes, therefore, requests—on a one time only basis, and with the understanding that this will not set a precedent—permission to make two additional sailings with full subsidy on TR 15-B before the end of 1987. Lykes states its understanding that no other U.S.-flag liner operator currently serves this trade route and thus, there should be no objection to this request.

In addition, Lykes notes that one of the two scheduled vessels (JAMES LYKES) will also call at West Africa in conjunction with service on TR 15-B. Lykes' ODSA allows up to 12 sailings per year between the U.S. Gulf and West Africa. Lykes was recently granted permission for a 13th sailings with full subsidy. Since the JAMES LYKES would represent the 14th West African voyage, Lykes requests permission to make this call with full subsidy.

Lykes certifies that the vessel operations to be subsidized will be conducted in a manner which will not preclude Lykes from earning at least 50 percent of its inbound gross freight revenue and at least 50 percent of its outbound gross freight revenue for the services covered by the application from the carriage of competitive cargo.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 18, 1987.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Dated: December 10, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-28759 Filed 12-11-87; 8:45 am]
BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP 87-11; Notice 2]

Grumman Olson; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by Grumman Olson, a division of Grumman Allied Industries, Inc., of Sturgis, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays". The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on August 19, 1987, and an opportunity afforded for comment (52 FR 31120).

Standard No. 101 requires that headlamp controls have the identifying symbol or the specified identifying word placed on or adjacent to the controls. Grumman Olson produced approximately 280, 1987 model year walk-in vans that do not comply with Standard No. 101. These vans are equipped with unidentified headlamp controls. Grumman Olson believes that noncompliance with Standard No. 101 is inconsequential for the following reasons:

1. The position of the light switch has not changed in these vehicles in 10 years.
2. It would be reasonable to assume that new drivers would familiarize themselves with the vehicle before driving it.
3. These vehicles are used by commercial enterprises and typically driven by one person who is familiar with this vehicle.
4. All other controls on the instrument panel are identified allowing the driver to determine that the remaining control is the light switch.

One comment was received on the notice, which opposed the petition on the grounds that the arguments were unrealistic.

The agency has carefully reviewed this matter. Because the control is unidentified either by wording or a symbol, a driver's attention could be diverted while searching for the control or cause a delay in activating the headlamps in an emergency. These are potential safety problems that Standard No. 101 is intended to prevent. While the agency has granted other petitions involving noncompliances with the labelling requirements of Standard No. 101, none have involved the total failure to identify the control. Petitioner has not met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: December 8, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-28596 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP87-09; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Hose America, Inc.

This notice grants the petition by Hose America, Inc. of Iola, Kansas, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Standard No. 106 "Brake Hoses". The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on August 13, 1987, and an opportunity afforded for comment (52 FR 30276).

The subject air brake hose has a ⅜ inch nominal internal diameter and was designed for use between the frame and axle or between a towed and a towing vehicle. Paragraph S7.3.10, "Tensile Strength," of Standard No. 106 requires that such hose shall withstand a pull of 325 pounds without separation of the hose from its end fittings.

Hose America reported receiving 106,500 feet of hose produced by Thermoid, Inc., in March 1987 and identified by the symbol KX 93-87 and the following batch codes:

A 571 A
B 571 A
C 571 A
D 571 A
E 571 A
F 571 A

As of May 27, 1987, of the 106,500 feet delivered to Hose America, 88,452 feet have been isolated for recovery. Of the remaining 18,048 feet, 3000 feet have been completed as brake hose assemblies and installed on vehicles but are documented as passing the pull test requirement. As of May 16, 1987, there were 15,044 feet of hose installed as hose assemblies on vehicles produced by four trailer manufacturers and two hoses (4') (delivered by a distributor to Hose America) which may not comply with the pull test requirements.

When tested a few hours after assembly the samples of the above mentioned lot of bulk hose showed the following results at pull test:

Lbs of pull	No of samples
283	4
289	3
285	1
300	1
306	2
318	4
324	2
330	1
336	1
348	1
365	2
Total	22

Average pounds of pull: 313.6
Lowest pound of pull: 283
Highest pound of pull: 365

In addition, pull tests on freshly made hose assemblies produce elongation over 150% before failure and no leak at 300 psi.

A second pull test was conducted one week after assembly. This test showed values of pounds of pull between 377 and 436. The improvements, according to Hose America, are attributed to the hose having time to set around the barb and the shell of the end fitting assembly. Hose America believes that, even in the condition of "freshly made hose assemblies", "the possibility of noncompliance * * * in inconsequential as it relates to Motor Vehicle Safety."

One comment was received on the petition, which supported it.

The agency has carefully reviewed Hose America's petition, and has concluded that the existance of a noncompliance is in doubt. The standard provides that at least 24 hours shall elapse from assembly to time of testing air brake hose for tensile strength. Petitioner's statement that the first test occurred "within a few hours of assembly" implies that compliance testing occurred earlier than stipulated by the standard. No maximum time period is specified for tensile strength testing and the second test, conducted a week after assembly, demonstrated compliance.

Even were the first test conducted at 24 hours after assembly and a noncompliance demonstrated, it would appear from the second test that, by the time the hose would have been sold and installed for use in a motor vehicle, it would have conformed. Accordingly, it is hereby found that petitioner has met its burden of persuasion and that the noncompliance herein described is inconsequential as it relates to motor vehicle safety.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 8, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-28595 Filed 12-11-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0022
Form Number: TFS 1022
Type of Review: Extension
Title: First Letter to Payee Requesting a Collection Refund When a Double Payment Exists
Description: The TFS 1022 form is sent when an original and its substitute check which are nonrepetitive payments have been negotiated bearing similar endorsements. The form is mailed to a payee requesting a refund for overpayment. This form allows the Adjudication Division to go directly to a payee if the issuing agency does not have a chargeback agreement with them.
Respondents: Individuals or households
Estimated Burden: 147 hours
Clearance Officer: Hector Leyva (301) 436-5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Date: December 8, 1987.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-28575 Filed 12-11-87; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 239
Monday, December 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 15, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

*1. Examination and Enforcement Matters.
Dated: December 9, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-28669 Filed 12-9-87; 4:40 pm]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 46149 December 4, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 1, 1987.

CHANGE IN THE MEETING: Deletion/ additional items.

The following item was not considered at a closed meeting on Tuesday, December 8, 1987, at 2:30 p.m.:

Institution of injunctive action.

The following additional time was considered at a closed meeting on Tuesday, December 8, 1987, at 2:30 p.m.:

Formal order of investigation.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Jonathan G. Katz,

Secretary.

December 9, 1987.

[FR Doc. 87-28670 Filed 12-9-87; 4:41 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1396]

TIME AND DATE: 10 a.m. (E.S.T.), Wednesday, December 16, 1987

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 12, 1987.

Discussion Item

1. Tellico Reservoir Waterfowl Refuge.

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1987 Series F Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers To Take Further Action Relating to Issuance and Sale of 1987, Series F Power Bonds.

A3. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Installation of New Electrostatic Precipitator Additions at Colbert Fossil Plant.

A4. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(A4.1) Construction of a 161-kV Transmission Line for the West Cookeville-Gainesboro 161-kV Transmission Line and (A4.2) Construction of a 161-kV Transmission Line for the Maury-Radnor No. 2 Transmission Line.

A5. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(A5.1) Test and Replacement Program for Silicone Cables at the Sequoyah Nuclear Plant; (A5.2) Provide Engineering and Related Services in Support of the Integrated Design Inspection for the Emergency Raw Cooling Water System at the Sequoyah Nuclear Plant; (A5.3) Civil Engineering Calculation Regeneration Program at the Sequoyah Nuclear Plant; (A5.4) Special System Review of the Design, Modification, Testing, and Operation of Emergency Equipment Cooling Water and Residual Heat Removal Systems at Browns Ferry Nuclear Plant; and (A5.5) Configuration Management to Provide Calculations Supporting the Design Basis and Plant Configuration Required at Browns Ferry Nuclear Plant.

B—Purchase Awards

B1. Letter of Agreement SK-17700A—Rental, Purchase, and Maintenance of Savin Copying Equipment, Accessories and Supplies for Division of Property and Services, Chattanooga, Tennessee.

B2. Letter of Agreement SK-17701A—Rental, Purchase and Maintenance of Xerox Copying Equipment, Accessories and Supplies for Division of Property and Services, Chattanooga, Tennessee.

B3. Letter of Agreement SK-17704A—Rental, Purchase, and Maintenance of Ricoh Copying Equipment, Accessories, and Supplies for Division of Property and Services, Chattanooga, Tennessee.

B4. Request for Proposal RB-751919—Replacement of Telecommunications Systems in Chattanooga and Knoxville, Tennessee.

B5. Invitation TA-470323—240-inch Openside Vertical Boring Mill for the Power Service shop at Muscle Shoals, Alabama.

B6. Request for Proposal YA-15802A—Basic Ordering Agreements for Microcomputer Hardware, Software, Peripherals, and Add-on Products for the ADP Equipment Management Branch.

C—Power Items

C1. Cooperative Agreement No. TV-73678A with Southern California Edison for Cooperation in a Research Project to Conduct Evaluation and Testing of a Sodium Sulfur High Temperature Battery System for Use in Electrical Vehicles.

C2. Cooperative Agreement No. TV-73679A with North Atlantic Technologies, Inc. for Cooperation in a Project to Demonstrate an Open Channel Air Preheater Test Program in Support of the 20-MW Hybrid Atmospheric Fluidized Bed Combustion Project.

C3. Letter Agreement with Cooper Tire & Rubber Company Covering Relocation of TVA's Tupelo-Okolona 161-kV Line and Engineering Work for Relocation of TVA's Leased Tupelo-Okolona 46-kV Line to Accommodate Proposed Expansion of Cooper's Tire Manufacturing Plant Near Tupelo, Mississippi.

C4. Contract No. TV-65205A with Muhlenberg County, Kentucky, Providing for the Relocation of an Access Road to Green River at Paradise Fossil Plant, in Muhlenberg County.

C5. Revisions to the Economy Surplus Power Program Which is Currently Being Offered to TVA's Directly Served Customers on an Experimental Basis.

D—Personnel Items

[1] D1. Supplements to Contract No. TV-71144A Between TVA and Stemar Corporation, Charlottesville, Virginia, Covering Arrangements for Management Services Related to the Nuclear Power Program.

D2. Supplement to Employee Loan Agreement with Institute of Nuclear Power Operations—Contract No. TV-69552A, Requested by Office of Nuclear Power.

D3. Supplement to Employee Loan Agreement with General Electric Company—Contract No. TV-69197A, Requested by Office of Nuclear Power.

D4. Supplement to Employee Loan Agreement with Westinghouse Electric Corporation—Contract No. TV-69499A, Requested by Office of Nuclear Power.

D5. Supplement to Contract No. TV-68702A with Stone & Webster Engineering Corporation, Requested by Office of Nuclear Power.

D6. Supplement to Contract No. TV-68879A with Stone & Webster Engineering Corporation Covering Arrangements for Services Related to TVA's Nuclear Power Program, Requested by Office of Nuclear Power.

D7. Supplement to Employee Loan Agreement with Management Analysis Company, San Diego, California—Contract No. TV-69288A, Requested by Office of Nuclear Power.

D8. Supplement to Employee Loan Agreement with G. L. Rogers Co., Inc.—Contract No. TV-72270A, Requested by Office of Nuclear Power.

D9. Supplement to Employee Loan Agreement with Bechtel North American Power Corportion—Contract No. TV-69196A, Requested by Office of Nuclear Power.

D10. Supplement to Contract No. TV-71143A Between TVA and Basic Energy Technology Associates, Inc., of Annandale, Virginia, for Services Related to the Nuclear Power Program, Requested by Office of Nuclear Power.

D11. Supplement to Personal Services Contract No. TV-71471A with H. E. Stone, Inc. of San Jose, California, for Assistance in Connection with TVA's Nuclear Power Program, Requested by Office of Nuclear Power.

D12. Supplement to Consulting Contract No. TV-71028A with Aptech Engineering Services, Palo Alto, California, to Provide Consulting Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

[1] D13. Supplement to Consulting Contract No. TV-71022A with WPD Associates, Inc. (William P. Derrickson), North Hampton, New Hampshire, Requested by Office of Nuclear Power.

E—Real Property Transactions

E1. Sale of Permanent Easement for Cemetery Purposes to Trustees of Dalton Cemetery, Affecting Approximately 0.14 Acre of Cherokee Reservoir Land in Grainger County, Tennessee—Tract No. XCK-571CE.

E2. Grant of Permanent Easement to the State of Tennessee Department of Transportation for a Road Right-of-Way, Affecting 0.417 Acre of Land in Morgan County, Tennessee—Tract No. XTERA-1H.

E3. Proposed Advertisement and Sale of Permanent Easement for the Construction and Operation of a Commercial Recreation Complex, Affecting 262.8 Acres of Kentucky Reservoir Land, located in Marshall County, Kentucky—Tract No. XGIR-910RE.

E4. Modification of Deed to James C. Martin and Wife, Evia M. Martin, Affecting Approximately 0.06 Acre of Guntersville Reservoir Land in Jackson County, Alabama—Tract No. XGR-37.

E5. Public Auction Sale of Phosphate Mineral Reserve Underlying 600 Acres in Polk County, Florida.

E6. Filing of Condemnation Cases.

F—Unclassified

F1. Supplement to Contract No. TV-69460A with Chattanooga State Technical Community College for Cooperation in a Project to Conduct Job-Search Workshops and Provide for Training, Job Placement, and Relocation Assistance to Dislocated Tennessee Chemical Company Workers in Copper Hill, Tennessee.

F2. Contract No. TV-72499A with United States Department of Agriculture, Soil Conservation Service in Tennessee, for Cooperation in a Project to Reclaim Certain Abandoned Coal and Noncoal Mineral Lands.

F3. Supplement to Subagreement No. 23 to Memorandum of Agreement No. TV-23928A Between TVA and the U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Improvements to Navigation Facilities on the Tennessee River.

F4. Trust Agreement Between TVA Retirement System Board and Mellon Bank, N.A., and Termination of Existing Trustee Agreements.

[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: December 9, 1987.

John G. Stewart,

Manager of Policy, Planning and Budget.

[FR Doc. 87-28720 Filed 12-10-87; 11:02 am]

BILLING CODE 8120-01-M

Federal Register

Monday
December 14, 1987

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3299-9]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is requiring that individuals or legal entities involved in the production, import or export of specified ozone-depleting chemicals in 1986 provide information regarding these activities to EPA within 30 days.

To implement the Montreal Protocol, EPA must obtain data on United States 1986 production, imports and exports of the chemicals covered by this agreement. This information is critical because the Montreal Protocol uses 1986 activity as the baseline for its restrictions.

In addition to this request for data, EPA is also publishing today in the **Federal Register** its proposed detailed strategy for implementing the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol). While EPA is asking for public comment on that proposed strategy, this data collection rule is effective immediately.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Seidel; Stratospheric Protection Program; Office of Program Development (ANR-445); Office of Air and Radiation; 401 M Street, SW., Washington, DC 20460. (202) 382-2878.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1987, the United States and 23 other nations signed the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol). This agreement sets forth a timetable for reducing specified ozone-depleting chemicals. It represents a significant multilateral response to addressing the health and environmental risks of stratospheric ozone depletion.

The requirements contained in the Montreal Protocol and EPA's proposed plan for implementing them within the United States are discussed in detail in a **Federal Register** notice also published today.

To implement the Montreal Protocol, EPA must obtain data on United States 1986 production, imports and exports of the chemicals covered by this agreement. This information is critical because the Montreal Protocol uses 1986 activity as the baseline for its restrictions.

Although the timing of the effective date of the Montreal Protocol is uncertain (it depends on when the conditions for entry into force are satisfied), it could occur as early as January 1, 1989. The effective date (termed entry into force) would be "January 1, 1989 provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances * * *." In addition, *the Vienna Convention for the Protection of the Ozone Layer*, under which this Protocol was negotiated, must also have entered into force before the Protocol can take effect. If these conditions have not been satisfied by January 1, 1989, than the Protocol enters into force on the 90th day following the date on which the conditions have been fulfilled.

Recognizing the potentially short time period before entry into force, the participants at the Diplomatic Conference in Montreal passed a "Resolution on Reporting of Data." This resolution "[C]alls upon all Signatories to take, expeditiously, all steps necessary to acquire data and report on the production, import and export of controlled substances in a complete and timely manner * * *."

To implement this conference resolution, the United Nations Environment Program (UNEP) has already requested production and consumption data from signatories and has tentatively scheduled a meeting for early next year at which signatories to discuss and report on data collection efforts.

II. Statutory Authority

EPA is requiring this information under the authority granted it in Section 114 of the Clean Air Act. This section states that "the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this Act * * * provide such other information, as he may reasonably require * * *."

EPA has elected to require this information by rule to ensure that all producers, importers and exporters receive notice that this information is being collected. If the Agency instead sent letters to firms believed to be involved in these activities, it might not reach the entire universe of involved parties.

EPA intends to send follow-up requests for information under section 114 to producers of the specified ozone-depleting chemicals asking for more detailed information related to past, current, and future production activity. The information requested in those letters will supplement that required by this rule.

The rule is being published as a final action without first seeking public comment for several reasons. First, the rule is limited in scope and simply requires that information on past specified activities be reported. Second, the information requested is straightforward and clearly delineated. Third, the resources involved in reporting this information should be minimal. Only seven firms are believed to produce the specified ozone-depleting chemicals in the United States, while fewer than 20 firms or individuals are likely to have been importers or exporters in 1986. Fourth, this information is not available through existing channels. While some of the information is available through the U.S. International Trade Commission and the Chemical Manufacturers Association, this data is presented in an aggregate manner and does not cover most of the specified ozone-depleting chemicals. Fifth, as discussed EPA will need this information in a timely manner to respond to UNEP's request and to participate in the upcoming meeting on data collection. For these reasons, EPA finds that notice and public comment on this rule are impracticable, unnecessary and contrary to the public interest within the meaning of 5 U.S.C. section 553(b)(B).

III. Requirements of the Rule

A. Affected Parties

The rule applies only to those parties who produced, imported, or exported the specified bulk chemicals (See section III.B below) in 1986. Thus, firms which use chlorofluorocarbons (CFCs) and halons as part of their manufacturing process would not be affected by this rule. In fact, as stated above, EPA believes that only seven firms produced the specified ozone-depleting chemicals in the United States in 1986 and fewer than 20 firms were involved in importing or exporting these chemicals in their bulk form.

It is important to note that imports or exports of products containing or produced with the specified ozone-depleting chemicals would not be covered by this rule. Thus, it would not apply to a firm importing refrigerators containing CFC-12. It would, however, apply to the import or export of any bulk shipments of mixtures or azeotropes

containing the specified chemicals. The definition of controlled substances contained in the Montreal Protocol states that it excludes any of the specified chemicals "whether existing alone or in mixture that is in a manufactured product other than a container used for transportation or storage * * *."

B. Specified Ozone-Depleting Chemicals

The Montreal Protocol and therefore this rule applies to the following chemicals:

(1) CFC-13—Trichlorofluoromethane (CFC-11)
(2) CCl2F2—Dichlorodifluoromethane (CFC-12)
(3) CCl2F-CClF2—Trichlorotrifluoroethane (CFC-113)
(4) CF2Cl-CClF2—Dichlorotetrafluoroethane (CFC-114)
(5) CClF2-CF3—(Mono)chloropentafluoroethane (CFC-115)
(6) CF2BrCl—Bromochlorodifluoromethane (Halon 1211)
(7) CF3Br—Bromotrifluoromethane (Halon 1301)
(8) C2F4Br2—Dibromotetrafluoroethane (Halon 2402)

C. Data Required

EPA is requiring that affected parties provide data on the quantity of each of the specified chemicals that was produced, imported or exported in 1986. The year 1986 is the baseline used in the Montreal Protocol for determining limits on production and consumption (defined as production plus imports minus exports) established by that agreement. As a result, 1986 is the year for which data is sought.

Information on the quantity and location of each of the specified chemicals produced in the United States or its territories is required along with the amount of those chemicals which may have been used and consumed as chemical intermediaries in the production of other chemicals. The latter information is necessary to avoid double-counting CFC or halon production. Documentation supporting the submission of 1986 production levels could include production records or logs, certified production statements used for other reporting purposes or similar information. Quantities should be reported in kilograms for each of the specified CFCs and halons.

The quantity of each specified chemical imported to the United States and its territories is required to be reported to EPA along with Entry Number, Customs District and Port Code, Employer Identification Number (EIN) or importer number, commodity code, the date and port of entry and the country in which it was produced. The required information on exports includes the quantity exported, the producer of the chemical, the date and port of exit, the EIN, Customs District and Port Code, the commodity code, and the country of final destination. Documentation supporting imports and exports should include copies of official papers (e.g., shippers export declarations, Form 7525 and Entry Summaries, if available) or other evidence confirming such activity.

Affected parties should specify what of the submitted data is covered by 40 CFR, Part 2, Subpart B, which governs the treatment of business information. Congress has given EPA broad authority to secure this information through Section 114 of the Clean Air Act for the purposes of developing regulations and standards.

Under section 114, EPA is empowered to obtain information which may be considered confidential business information. Producers, importers, and exporters may request that EPA consider some or all of the information they supply as confidential at the time it is submitted. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice.

D. Submission of Data

The data required under this rule must be submitted to EPA within 30 days following the date of publication of this notice. It should be sent to: Stratospheric Protection Program; Office of Program Development (ANR-445); Office of Air and Radiation; 401 M Street SW., Washington, DC 20460.

E. Failure to Comply

Affected parties failing to submit the required data will be in violation of section 113 of the Clean Air Act and will be subject to fines of up to $25,000 per day. In addition, since the data collected by this rule will likely be used in determining the allocation of rights to produce and import bulk CFCs and halons, the failure to notify EPA of 1986 activities could invalidate future claims to such allocations.

F. Future Steps

EPA intends to use the information required by this rule to develop the U.S. 1986 production and consumption baseline as required under the Montreal Protocol. In addition, this data would also be used as the basis for the proposed "allocated quota" approach to implementing the Protocol (see accompanying proposed rule) which grants past producers and importers rights to produce and consume based on their 1986 activities. EPA intends to publish for comment the allocations based on this data in Spring of 1988. Final allocations providing the basis for issuing rights to import and produce the regulated CFCs and halons would be published as part of the final rule implementing the Montreal Protocol. That final rule is scheduled for promulgation by August 1, 1988.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291, and therefore has not prepared a regulatory impact analysis (RIA).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. sections 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). Because this rule will not have a significant impact on small entities, no RFA has been prepared.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2060-0158.

Date: December 1, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 82 of Title 40 of the Code of Federal Regulations is added as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

Authority: 42 U.S.C. 7457(b).

§ 82.20 Baseline data collection.

(a) This section applies to any individual or legal entity who engaged in any of the following activities in 1986 involving any of the chemicals specified in § 82.20(b) of this part:

(1) Producers who manufactured the chemicals listed in § 82.20(b) from raw materials or feedstock chemicals;

(2) Importers who transported the chemicals listed in § 82.20(b) from outside the United States or its territories to persons within the United States or its territories; and

(3) Exporters who transported the chemicals listed in § 82.20(b) from within the United States or its territories to outside the United States or its territories.

(b) The chemicals covered by this section are the following:

(1) CFC-l3—Trichlorofluoromethane (CFC-11)
(2) CCl2F2—Dichlorodifluoromethane (CFC-12)
(3) CCl2F-CClF2—Trichlorotrifluoroethane (CFC-113)
(4) CF2Cl-CClF2—Dichlorotetrafluoroethane (CFC-114)
(5) CClF2-CF3—(Mono)chloropentafluoroethane (CFC-115)
(6) CF2BrCl—Bromochlorodifluoromethane (Halon 1211)
(7) CF3Br—Bromotrifluoromethane (Halon 1301)
(8) C2F4Br2—Dibromotetrafluoroethane (Halon 2402)

(c) Individuals and legal entities meeting the conditions set forth in § 82.20 (a) and (b) must report the following information along with supporting documentation:

(1) Name, address and telephone number of contact;

(2) The amount (kilograms) of each of the substances it produced in 1986 in the United States or its territories and the location of its production;

(3) The amount (kilograms) of each of the chemicals listed in § 82.20(b) which was used and entirely consumed as a chemical intermediary in the production of other chemicals;

(4) The amount (kilograms) of each of the chemicals listed in § 82.20(b) which it imported into the United States or its territories in 1986, along with the port and date of entry and the country in which it was produced;

(5) The amount (kilograms) of each of the chemicals listed in § 82.20(b) which in 1986 it exported from the United States or its territories, the producer of the chemical, the date and port of exit, the country of final destination and the date of entry into that country.

(d) Information required by § 82.20(c) must be submitted to EPA within 30 days after the date of publication of this section. Reports should be addressed to: Stratospheric Protection Program; Office of Program Development (ANR-445); Office of Air and Radiation; U.S. Environmental Protection Agency; 401 M Street, SW., Washington DC 20460.

(e) Failure to submit required information by this date shall be a violation of section 114 of the Clean Air Act and may invalidate future claims for allocation of rights to produce or import chemicals listed in § 82.20(b).

[FR Doc. 87-28214 Filed 12-11-87; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3284-9]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. Specifically, the proposed rule would require a freeze at 1986 consumption and production levels of CFC–11, –12, –113, –114, and –115 on the basis of their relative ozone depletion weights, followed by reductions to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It would also prohibit production and consumption of Halon 1211, 1301 and 2402 from exceeding 1986 levels on a weighted basis beginning in approximately 1992. Under limited circumstances, somewhat higher levels of production (but not consumption) would be permitted. Consumption is defined in the proposed rule as production plus imports minus exports of the bulk chemicals described above.

These requirements are being proposed under section 157(b) of the Clean Air Act and would constitute the United States' implementation of the "Montreal Protocol on Substances That Deplete the Ozone Layer" (Montreal Protocol) which was signed by 24 countries, including the United States, on September 16, 1987 in Montreal, Canada.

However, EPA is proposing that the control requirements described above only take effect if the United States ratifies the Protocol and following entry into force.

EPA's proposed action is in response to growing scientific evidence linking increased atmospheric levels of chlorine and bromine to anticipated depletion of the ozone layer. If ozone depletion occurs, increased levels of harmful ultraviolet radiation would penetrate to the earth's surface resulting in substantial damage to human health and the environment.

To implement the Montreal Protocol, EPA proposes to restrict production and consumption of the specified ozone-depleting chemicals. Quotas reflecting the allowable level of production and consumption will be allocated to each of the firms who engaged in these activities in 1986. Trading of allocated quotas would be permitted. Exports and imports of the restricted chemicals will also be allowed consistent with restrictions contained in the Montreal Protocol. EPA believes that this approach will provide a low-cost means of achieving its regulatory goal, spur technological innovation, minimize administrative requirements and facilitate enforcement. EPA is also considering whether to develop specific regulations limiting CFC and halon use for particular industries to supplement allocated quotas.

As an alternative to the above regulatory approach, EPA is requesting comment on the use of a regulatory fee in addition to allocated quotas. This option is being considered because it addresses concerns that an allocated quota system, by itself, is inequitable—that CFC and halon producers and importers might accrue excessive profits at the expense of CFC and halon user industries and consumers. The fee would be set to obtain for the United States Treasury price increases resulting from the scarcity created by EPA regulations. Alternatively, this same objective could be satisfied by auctioning (instead of allocating) rights to produce and consume CFCs and halons.

In a separate notice accompanying today's proposal EPA is requiring firms involved in producing, importing or exporting any of the regulated chemicals in 1986 to report these activities to EPA.

DATES: A public hearing will be held on January 7, 1988 from 9:00 a.m. to 5:00 p.m. at the location listed below, in order to provide an opportunity for oral presentations of data, views, or arguments concerning the regulations proposed in this notice. Persons who wish to testify at this hearing should notify Stephen R. Seidel at the address listed below prior to December 29, 1987.

Written comments must be submitted to the location listed below by February 8, 1988.

ADDRESSES: The public hearing will be held at the EPA Education Center, 401 M Street, SW., Washington, DC 20460.

Written comments should be sent to Docket No. A–87–20, Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to Stephen R. Seidel at the address listed below.

FOR FURTHER INFORMATION CONTACT: Stephen R. Seidel, Senior Analyst, Office of Program Development, Office of Air and Radiation (ANR–445), EPA, 401 M Street, SW., Washington, DC 20460. Telephone (202) 382–2787.

SUPPLEMENTARY INFORMATION:

I. Overview of the Problem

By preventing much of the potentially harmful ultraviolet radiation (UV–B radiation) from penetrating to the earth's surface, the stratospheric ozone layer acts as a vital shield protecting human health, welfare and the environment.

Concern about possible depletion of the ozone layer from chorofluorocarbons (CFCs) was first raised in 1974 with publication of research which theorized that chlorine released from CFCs could migrate to the stratosphere and reduce the amount of ozone (Molina and Rowland, 1974). Some of the CFCs have an atmospheric lifetime of over 120 years (i.e., they do not breakdown in the lower atmosphere). As a result, they migrate slowly to the stratosphere where higher energy radiation strikes them, releasing chlorine. Once freed, the chlorine acts as a catalyst repeatedly combining with and breaking apart ozone molecules. If ozone depletion occurs, more UV–B radiation would penetrate to the earth's surface. Moreover, because of the long atmospheric lifetimes of CFCs, it would take many decades to over a century for the ozone layer to return to past concentrations.

In the thirteen years since that theory was first proposed, substantial scientific research has supported the general concern that increased concentrations of chlorine, as well as bromine from halons, in the stratosphere pose substantial risks of depletion resulting in harm to human health and the environment.

Today's proposal is in response to increased concerns raised by the improved understanding of the risks associated with continued use of CFCs and halons. During the past two years, two extensive assessments of these risks have been completed and are relied on by EPA in evaluating the need for additional restrictions on the use of potential ozone-depleting chemicals. The first, *Atmospheric Ozone, 1985* (WMO, 1986), provides an extensive review of the current state of knowledge concerning atmospheric chemistry and modelling, past changes in trace gases that affect ozone levels, and current trends in ozone levels. A second study, *An Assessment of the Risks from Trace Gases that can Modify the Stratosphere* (EPA, 1987), was prepared by EPA and

reviewed by its Science Advisory Board. This study summarizes the state of knowledge related to both atmospheric issues (e.g., possible future changes in ozone levels), and human health and environmental effects if the ozone layer were depleted. These studies and more recent research findings are summarized below in Section IV. They also were relied on extensively in developing the regulatory impact analysis (RIA) prepared in support of this rule which is summarized below in Section VII.

Unlike most issues of concern to EPA, stratospheric ozone protection necessarily involves all nations of the world. Given their long atmospheric lifetimes, CFCs and halons become widely dispersed. As a result, the release of these chemicals in one country could adversely affect the stratosphere above, and therefore the health and welfare of, other countries. Thus, to fully protect the ozone layer from CFCs and halons, an international agreement is essential.

Recognizing the global nature of this issue, the United Nations Environment Program (UNEP) organized negotiations in 1982 aimed at developing an agreement to protect the ozone layer. Following a hiatus in 1986 to develop and assess scientific and economic information, negotiations resumed in December of that year. These negotiations were successfully concluded on September 16, 1987 in Montreal when 24 nations signed a Protocol requiring substantial reductions in the most potent ozone-depleting chemicals. This international agreement represents a concerted effort by the major CFC and halon producing and consuming nations to respond to the risks from continued reliance on ozone-depleting chemicals. It constitutes a landmark agreement among nations to take action in advance to prevent significant environmental damage from occurring. The text of the Protocol is included as an annex to this preamble and is described in greater detail below.

The regulations proposed today would permit the United States to meet the requirements established by the Montreal Protocol. They would also fulfill EPA's responsibility under section 157(b) of the Clean Air Act to protect stratospheric ozone as needed to protect public health and welfare.

Finally, this proposal also meets the requirements of an agreement settling a lawsuit brought by the Natural Resources Defense Council in the District Court of the District of Columbia (NRDC v. Thomas, No. 84-3587 (D.D.C.)) seeking to compel EPA to promulgate regulations under section 157(b). The terms of the settlement (as amended to extend the schedule) require EPA to propose regulations or state its reason for deciding not to regulate by December 1, 1987, and to take final action by August 1, 1988.

II. Background

A. Past Regulatory Actions

Following the initial concerns raised in 1974 about possible ozone depletion from CFCs, EPA and the Food and Drug Administration acted in 1978 to ban the use of CFCs as aerosol propellants in all but "essential applications" (43 FR 11301, March 17, 1978; 43 FR 11318, March 17, 1978). During the early 1970s, CFCs used as aerosol propellants constituted over 50 percent of total CFC consumption in the United States. This particular use of CFCs was reduced in this country by approximately 95 percent. Today's proposal does not affect the existing EPA and FDA regulations restricting the use of CFCs as aerosol propellants.

Since 1978, CFC use has continued to expand in other applications (e.g., as a foam-blowing agent, refrigerant and solvent). Total production now has surpassed pre-1974 levels.

Largely in response to a series of studies by the National Academy of Sciences published in the late 1970s (NAS, 1976, 1979a, and 1979b) which warned of substantial depletion and harm from continued use of CFCs, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) which discussed an immediate freeze on the production of certain CFCs and the possibility of employing a system of marketable permits to allocate CFC consumption among industries which use CFCs (45 FR 66726; October 7, 1980).

Following publication of this ANPR, additional scientific evidence (see for example, *Causes and Effects of Changes in Stratospheric Ozone: Update 1983,* (NAS, 1984)) became available which suggested that the atmospheric factors affecting ozone levels were more complex than previously thought. For example, atmospheric concentrations of gases other than CFCs that also affect ozone were also increasing. Atmospheric models which are used to analyze possible future trends in ozone levels were now capable of simultaneously considering changes in multiple trace gases including CFCs. Because increases in some of these gases (e.g., carbon dioxide and methane) could potentially buffer the depleting effects of CFCs, concern about possible changes in total column ozone levels (i.e., the total amount of ozone encountered by radiation passing from the top of the atmosphere to the earth's surface at any given location) was diminished.

The apparent urgency of the ozone depletion problem was also reduced by the fact that CFC use worldwide in the early 1980s was relatively constant. While some nations did not follow the United States example by reducing their use of CFCs as aerosol propellants, others did, which further reduced global consumption of CFCs. In addition, a downturn in global economic conditions during this period had temporarily reduced the rate of growth of CFCs in nonaerosol applications.

B. EPA's Stratospheric Protection Plan

Since 1983, worldwide production of CFCs has grown at an average annual rate of 5 percent. In light of this rate of growth and further advancements in the scientific understanding of the link between CFCs and ozone depletion, EPA developed its Stratospheric Protection Plan (51 FR 1257, January 10, 1986). This plan described the analytic basis for supporting the on-going international negotiations and for reassessing the need for additional regulations of CFCs and other potential ozone-depleting chemicals.

It also set forth a schedule for both domestic and international activities related to stratospheric ozone protection. It committed EPA to sponsoring or participating in a series of workshops, both here and abroad, aimed at developing information that would be used for international negotiations and for domestic rulemaking. Workshops discussing economic issues related to ozone protection involving interested parties from within the United States were held in March and July of 1986. International workshops covering the same topics were sponsored by UNEP and took place in May and July of 1986 in Rome, Italy and Leesburg, Virginia, respectively.

The plan also committed EPA to preparing the risk assessment document mentioned above and to obtaining review of this document by the Agency's Science Advisory Board (SAB). Meetings of a subcommittee of the SAB organized specifically to review this document were held in November 1986 and January 1987. Comments from the public were also solicited (51 FR 40510, November 7, 1986). The document has been revised in response to comments from the panel and the public and is available in the docket at the address given above. The findings of the risk assessment are described in greater detail below, in Section IV.

Finally, the plan also committed EPA to conducting a rulemaking on possible further regulation of CFCs and to actively participating in the UNEP negotiations on an international agreement to limit ozone-depleting chemicals.

C. International Negotiations

The initial round of international negotiations, conducted under the auspices of UNEP, resulted in the Vienna Convention for the Protection of the Ozone Layer, which was signed in March 1985. This agreement promotes global coordination necessary for the protection of the ozone layer by providing for international cooperation in research, monitoring, and information exchange. While the initial negotiations failed to reach agreement on specific obligations limiting ozone-depleting chemicals, the Vienna Convention provides a framework for the continued negotiation and adoption of international regulatory measures necessary to protect the ozone layer.

On December 1, 1986, negotiations resumed on a possible protocol to limit CFCs and other ozone-depleting chemicals. Despite wide differences in initial positions among participating nations, these negotiations resulted ten months later in the adoption of the Montreal Protocol which was signed on September 16, 1987, by 24 nations. Specific provisions of the Protocol are discussed in detail below, and the full text is printed as an addendum to this notice.

III. Statutory Authority

Section 157(b) of the Clean Air Act (42 U.S.C. 7457(b) authorizes the Administrator to issue "regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control."

Two aspects of this regulatory authority are notable. First, the Administrator is not required to prove that a "substance, practice, process or activity" does in fact deplete stratospheric ozone before he may regulate it. In 1977 when the ozone protection provisions were added to the Clean Air Act, Congress recognized that scientists were not certain whether stratospheric ozone was being depleted and what was causing any depletion that did occur. *See, e.g.,* H.R. Rep. No. 294, 95th Cong., 1st Sess. 98–99 (1977). However, Congress also recognized the potentially serious health and environmental consequences of ozone depletion if it were occurring, and authorized EPA to act in the face of scientific uncertainty to protect against those adverse consequences. *Id.* Thus, the Administrator may regulate on the basis of "his judgment" that the subject of regulation "may be reasonably anticipated" to affect the stratosphere and that the effect "may be reasonably anticipated to endanger public health and welfare."

Second, the Administrator is given broad latitude to choose what and how to regulate. He is not limited to controlling ozone-depleting substances themselves; he may also regulate "any practice, process, activity" that threatens the ozone layer. Nor is he limited to a particular control strategy. Besides an implicit requirement that regulations be efficacious, the statute requires only that they take into account the cost and technological feasibility of achieving the required level of control. In short, EPA has broad latitude to employ the regulatory options it finds appropriate to control threats to stratospheric ozone that in turn threaten public health and welfare.

IV. Risk Assessment

A. Changes in Atmospheric Composition

Measurements of the concentrations of specific gases over the past decade or longer have produced conclusive evidence that human activities are altering the composition of the earth's atmosphere. Table 1 summarizes the recent rate of increase for several gases, along with the period for which measurements are available. Because each of these gases affects the quantity of ozone, past and future changes in their atmospheric levels are a significant element in understanding the risks of ozone depletion.

Table 1 shows that atmospheric levels of CFC–11 and –12 have grown at the rate of 5 percent annually since 1978. CFC–11 is used primarily as a foam-blowing agent and CFC–12 is used primarily as a refrigerant. Outside the United States, in many countries both are also used extensively as aerosol propellants. Atmospheric levels of CFC–113, which is used primarily as a solvent by the electronics and metal cleaning industries, have been increasing at roughly double this rate during the same period. These growth rates reflect both continued emissions of CFCs during this period and the long atmospheric lifetimes of these chemicals.

TABLE 1.—CHANGES IN ATMOSPHERIC CONCENTRATIONS OF OZONE-MODIFYING GASES

	Measured rates of increase		
	Percent per year	Period	Reference
CFC-11 (CCl_3F)	5.0	1978–1985	WMO, 1986.
CFC-12 (CCl_2F_2)	5.0	1978–1985	WMO, 1986.
CFC-113 ($C_2Cl_3F_3$)	10.0	1975–1983	Rasmussen and Khalil, 1982.
CFC-114 ($C_2Cl_2F_4$)	(1)	(1)	(1)
CFC-115 (C_2ClF_5)	(1)	(1)	(1)
Halon-1211 ($CBrClF_2$)	23.0	1979–1984	Khalil and Rasmussen, 1985.
Halon-1301 (CF_3Br)	(1)	(1)	(1)
Halon-2402 ($C_2F_4Br_2$)	(1)	(1)	(1)
Nitrous oxide (N_2O)	0.2	1978–1985	WMO, 1986.
Methane (CH_4)	1.0	1977–1985	NASA, 1986.
Carbon Dioxide (CO_2)	0.5	1958–1985	WMO, 1986.

[1] No data available.

Much less information is available about growth in Halon 1211, 1301 and 2402. These compounds are becoming more widely used primarily in certain specialized firefighting applications. No data is yet available on atmospheric trends of Halon 1301 or 2402, while very limited measurements suggest that atmospheric levels of Halon 1211 grew at 23 percent annually in recent years. In comparison to the CFCs, total levels of these halons remain very small; because they are believed to be extremely efficient depleters of ozone (Prather et al., 1984; WMO, 1986), they are being proposed for inclusion in this regulation. (See below, Section VI.)

Carbon dioxide and methane are also increasing in the atmosphere, though at annual rates much slower than the CFCs. Unlike CFCs and halons, these have the opposite effect on

concentrations of ozone and could potentially offset depletion caused by increases in these other gases. Carbon dioxide emissions result primarily from the burning of fossil fuels. In contrast, the reason that methane levels have increased is not well understood. Moreover, this gas has a much shorter atmospheric lifetime than CFCs (approximately ten years).

Nitrous oxide levels have also been increasing at approximately 0.2 percent annually. Sources of emissions include fossil fuel combustion and fertilizers. In isolation, nitrous oxides release nitrogen in the stratosphere which would act similarly to chlorine and catalytically destroy ozone. However, depending on the relative levels of chlorine and nitrous oxide, the latter can have the net effect of slowing down the rate of depletion by binding chlorine in a relatively inactive state.

B. Changes in Ozone Levels

The extensive measurements of recent growth in atmospheric levels of ozone-modifying gases provide only indirect evidence that human activities may be altering the earth's ozone layer. To more fully analyze these risks, two approaches have been developed. First, direct measurements of the quantity of ozone have been analyzed to determine if any trends are apparent; and second, atmospheric models have been developed that attempt to project future changes in ozone levels based on assumed changes in atmospheric levels of ozone-modifying gases.

1. Direct Measurements of Ozone Levels

Monitoring of ozone levels has been conducted to various degrees using ground-based instruments for several decades. These measurements examine both total column ozone levels and changes in the quantity of ozone at specific altitudes. Since the late 1970s, satellite-based instruments have expanded the ability to measure ozone levels throughout the world.

Based on the information available at the time, the WMO assessment concluded that total column ozone levels had not substantially been altered—that no statistically significant change had occurred. For example, it cites a study by Reinsel (1985) which shows that for the period 1970 to 1983, total column ozone levels had decreased by only 0.003 ± 1.2 percent per decade which does not represent a statistically significant trend.

The WMO assessment also stated that ozone levels in the upper atmosphere (at approximately 40 kilometers) had, in fact, decreased by approximately 0.2 percent to 0.3 percent per year over the period 1970 to 1980. However, increases in ozone levels in the troposphere (i.e., the lower atmosphere) had offset the decreases above resulting in effectively no change in total column ozone.[1]

Both these findings—essentially little or no change in total column ozone and decreases at 40 km—appear consistent with current atmospheric theories and models and are contained in EPA's risk assessment which was used as the basis for this rulemaking. However, preliminary information that has only recently become available raises the question whether total column ozone levels have, in fact, declined in recent years.

2. Preliminary Evidence of Ozone Depletion

a. Seasonal Ozone Losses in Antarctica. In May 1985, an article was published in *Nature* (Farman, Gardiner and Shanklin, 1985) which provided evidence that ozone levels during the months of September to November over Antarctica had declined by approximately 40 percent from the late 1970s. This discovery of the "Antarctic ozone hole" by the British Antarctic Survey team, based on data from a ground-based instrument, was completely unexpected.

Losses of the magnitude observed in Antarctica were not predicted by current atmospheric theories or models. The Antarctic ozone hole thus raises several important questions. Are the losses in ozone caused by CFCs and halons? Are these loss mechanisms unique to the conditions found above Antarctica or do they have implications for ozone levels elsewhere? Could this seasonal ozone loss itself have implications for global ozone concentrations? How, if at all, do our current theories and models need to be altered to reflect this phenomenon? These questions have been the subject of considerable research within the scientific community since the initial article in *Nature* appeared.

In October 1986, a team of researchers traveled to Antarctica to begin the process of collecting data to aid in answering these questions. Preliminary results from the first National Antarctic Ozone Expedition strongly suggest that anomolous chlorine chemistry plays a role in the development of the ozone hole. Team members reported measurements of chlorine monoxide—a key compound in the catalytic cycle by which chlorine destroys ozone—that were 20–50 times greater than observed elsewhere in the atmosphere (Pyle and Farman, 1987). These measurements have recently been substantiated by preliminary data collected during airplane flights over Antarctica during the formation of the ozone hole in 1987 as part of experiments conducted by the NASA, the National Oceanographic and Atmospheric Administration (NOAA), and others.

Many questions must still be answered before plausible changes in theories and models can be made to account for factors responsible for the ozone hole. Researchers still must determine the exact mechanisms or reactions which produce the high levels of chlorine monoxide and they must also determine the role of dynamic (e.g., meteorological forces including temperature, pressures and winds) factors. Most importantly, they still must determine whether these loss mechanisms are unique to Antarctica or may also affect ozone levels elsewhere and whether losses in Antarctica alone could influence global concentrations of ozone. Until a clearer picture emerges, the scientific issues raised by the Antarctic ozone hole cannot yet serve as a guide for policy decisions.

Because of these remaining uncertainties, EPA believes that no adequate basis yet exists for factoring the causes and global implications of the Antarctic ozone hole into its risk assessment and regulatory scheme. The Agency has de facto assumed that the ozone hole is not related to CFCs and halons. Additional measurements from a second expedition to Antarctica, further review of data obtained from the airplane flights through the ozone hole, and related atmospheric modelling studies should become available in the coming year. The Agency intends to closely follow these scientific developments and will modify its risk assessment if new information warrants such changes. It also intends to actively participate in upcoming international scientific assessments that are required in 1989 and every four years thereafter, which are to be used as the basis for determining the need for changes to the terms of the protocol which could occur beginning in 1990. EPA is particularly interested in comments on its treatment of this issue.

[1] Over the long term, increases in ozone in the lower atmosphere cannot continue to offset decreases in the stratosphere without substantial health and environmental damage resulting. Ozone in the lower atmosphere has been linked to respiratory disease in humans and damage to crops and forests and as a result is regulated by EPA under one of its national ambient air quality standards. Moreover, the same gases producing increased ozone in the lower atmosphere are also greenhouse gases and would contribute to substantial increases in global temperatures.

b. Possible Global Losses in Ozone. Recently published data have also called into question the conclusion that *global* total column ozone levels have not decreased (Kerr, 1987). Ground-based measurements of total column ozone now suggest that a 3 percent to 5 percent decrease has occurred over the past six years. Decreases of a similar magnitude over roughly the same period have been reported based on a preliminary assessment of data from the Nimbus-7 satellite (Kerr, 1987). Because of the complexities in interpreting satellite data (e.g., calibration, instrument drift and other corrections), this data is currently undergoing further scrutiny.

As was the case with the Antarctic ozone hole, global ozone losses of this magnitude appear to fall outside the bounds of what would be expected from current theories and models. If they are confirmed by further review of the evidence, several important questions would be raised. Are these losses in excess of historic variation or are they due to natural causes (e.g. the solar cycle, volcanic activity, etc.)? Are they related to increases in atmospheric levels of CFCs and halons? What, if anything, must be changed in current models to account for such losses?

A thorough review of this data to resolve these important uncertainties has recently been initiated by scientists at NASA and NOAA. Pending the outcome of this assessment, EPA does not believe that this preliminary evidence has yet been adequately reviewed and analyzed by the scientific community to allow for it to be used in its risk assessment or regulatory decisions. Once the on-going review is completed, if new information becomes available and previously unresolved issues are successfully addressed, then EPA will modify its risk assessment to reflect this improved understanding of recent trends in ozone. This information will also be examined in the context of the upcoming international scientific and policy reviews under the terms of the Protocol. EPA specifically requests comments on the appropriate means of factoring new scientific evidence into its risk assessment and future policy decisions.

3. Role of Atmospheric Models in Predicting Future Ozone Levels

While direct measurements provide useful information concerning past changes in ozone levels, atmospheric models are the only available tool for predicting possible future trends in ozone. These models, in more or less detail, attempt to replicate the forces which determine ozone concentrations. For example, current models include approximately 50 chemical species found in the atmosphere and simulate over 140 different reactions among these chemicals which directly or indirectly affect ozone abundance.

From EPA's perspective in evaluating risks, a key question is to what degree these models can accurately predict future ozone changes. As stated above, current models do not predict the Antarctic ozone hole and suggest that global ozone levels should not have yet declined by even one percent based on the historic use of CFCs and halons, and changes in other trace gases. Furthermore, current models fail to accurately project the abundance of all chemical species at all altitudes, thereby lowering our confidence in their predictive powers.

Despite these shortcomings, both the EPA and WMO risk assessments concluded that atmospheric models represent the best available tools for evaluating future trends in ozone levels. These studies show that, when tested against the current make-up of the atmosphere, the existing atmospheric models do a reasonably good job of replicating most key atmospheric constituents. Thus, the models accurately predict many, though certainly not all, of the key chemical constituents which affect the creation and destruction of ozone. While model accuracy will inevitably improve over time, EPA has relied on current versions in assessing the risks of future ozone depletion.

4. Future Trends in Ozone Levels: Assuming No Further Regulation of CFCs or Halons

In utilizing models to predict future ozone trends, the rate of growth of ozone-modifying gases is a key variable. As part of the Regulatory Impact Analysis (RIA) prepared in support of this proposal, EPA examined the risks of ozone depletion from continued use of CFCs, halons and other relevant trace gases. The assumptions underlying this analysis are detailed in Chapter 4 of the RIA and are summarized here.

EPA conducted extensive studies analyzing possible future rates of growth for CFCs and halons in the absence of additional regulations. (See for example: Hammitt et al. (Rand), 1986; Nordhaus and Yohe, 1986; and Gibbs et al. (ICF), 1986.) This issue was also the subject of both EPA and UNEP sponsored workshops in 1986. Based on this review, EPA believes that strong market demand exists for CFC products in many sectors of the economy, both in the United States and abroad, and that in the absence of regulation, use of CFC-11, -12, and -113 would increase. In the RIA, a middle estimate of growth in trace gas emissions was developed. For CFC-11 and CFC-12, the middle estimate implies an average annual growth rate of approximately 2.7 percent, which reflects a 2.5 percent annual growth rate for the developed world, and slightly higher projected growth in the developing world and in the Soviet Union. The middle scenario includes an average annual growth rate of 2.9 percent for CFC-113, 2.6 percent for CFC-114, and 2.6 percent for CFC-115.

Recent studies by Industrial Economics, Inc. (1987), with the cooperation of an ad hoc technical committee representing halon producers and users, provided the basis for estimates of future growth in production of Halon 1211 and 1301, which are assumed to grow at average annual rates of 4.3 and 2.7 percent. Because Halon 2402 is only used in minor applications in the United States, this chemical was omitted from the analysis.

Table 2 shows the range of growth rates assumed for these chemicals. This range of estimates reflect the many factors (e.g., economic and population growth, technological innovation, etc.) which influence projections over this period of time. It also shows the growth rates assumed for carbon dioxide, methane and nitrous oxide which were based on past measurements showing increases for each of these gases. Based on a simplified one-dimensional model of the combined effects of these gases, Table 2 indicates the projected ozone depletion for each of these scenarios. Thus, in the case which represents the mid-range estimate of future trends in emissions of trace gases, projected total column ozone would decline by 3.9 percent by 2025 and by 39.9 percent by 2075. In the case where CFC use only grows by approximately 1.2 percent annually, projected ozone depletion by 2075 would reach 7.0 percent. In the case where CFC use grows at approximately 3.8 percent per year, projected ozone depletion by 2075 would exceed 50 percent.

TABLE 2

[Percent total column depletion]

Year	Low CFC growth	Medium CFC growth	High CFC growth
Projected Future Ozone Depletion in the Absence of Regulation			
1985	0.00	0.00	0.00
1990	0.27	0.27	0.28
2000	0.76	0.88	1.02
2010	1.25	1.71	2.33
2020	1.87	3.00	4.73
2030	2.55	4.86	9.13

TABLE 2—Continued

[Percent total column depletion]

Year	Low CFC growth	Medium CFC growth	High CFC growth
2040	3.33	7.66	18.86
2050	4.32	12.32	>50
2060	5.40	20.27	>50
2070	6.47	32.48	>50
2075	7.00	39.90	>50

Estimates from statistical model developed by Connell (1986) and discussed in EPA Risk Assessment (1987).

CFC and Halon Scenarios

Average implied annual rates of growth (percent)

	1985-2000	2000-2050	Post-2050
Low Scenario			
CFC-11, 12, 114, 115	2.1	1.3	Constant
CFC-113	2.1	1.3	Constant
Halon-1211	5.5	1.5	Constant
Halon-1301	−0.5	1.6	Constant
Medium Scenario			
CFC-11, 12, 114, 115	3.6	2.5	Constant
CFC-113	4.0	2.5	Constant
Halon-1211	8.8	2.9	Constant
Halon-1301	1.1	3.2	Constant
High Scenario			
CFC-11, 12, 114, 115	5.2	3.8	Constant
CFC-113	6.1	3.8	Constant
Halon-1211	12.0	4.4	Constant
Halon-1301	2.0	4.7	Constant

Other Trace Gas Scenarios

Carbon Dioxide
50th percentile scenario from the National Academy of Sciences is used (implied annual growth in atmospheric concentrations of 0.7 percent from 1985 to 2165).
Methane
Annual growth of 0.017 parts per million in atmospheric concentrations.
Nitrous Oxide
Annual growth of 0.2 percent in atmospheric concentrations.

The ozone depletion estimates in Table 2 are based on a parameterization (i.e., a statistical simplification) of a one-dimensional model developed by Lawrence Livermore National Laboratory. A recent comparison of the results of this model with one-dimensional models conducted under the auspices of UNEP showed that this parameterization produced depletion estimates that were somewhat lower than those projected by other models for the same trace gas scenarios. (UNEP, 1987).

While this parameterization provides a reasonable representation of a one-dimensional model (Connell, 1986), by design it provides only a globally averaged estimate of depletion. More sophisticated two-dimensional models have recently been developed which provide estimates of ozone depletion by latitude. Since health and environmental effects will vary by latitude, these more detailed models would be more appropriate for calculating the impacts of depletion. However, because these models are expensive and time-consuming to use, they are of limited utility for examining a wide range of scenarios as required in EPA's risk assessment. In addition, different two-dimensional models differ substantially in the degree to which depletion varies with latitude. As a result of these limitations, EPA's estimates of risks rely only on the previously mentioned one-dimensional parameterization.

A comparison of these different models was conducted by EPA as part of its risk assessment (See Chapter 5). It showed that two-dimensional models predict greater average depletion than one-dimensional models for the same trace gas scenarios. For example, one two-dimensional model (developed by Sze) projects an 18 percent depletion compared to a 15 percent depletion for exactly the same scenario for a one-dimensional model. Two-dimensional models also generally project depletion higher than global averages at latitudes greater than 40 degree North or South, especially in the spring.

5. Effects of Ozone Depletion on Human Health and the Environment

Any decrease in total column ozone would lead to increased penetration of damaging ultraviolet radiation to the earth's surface. Under current atmospheric conditions, the ozone layer blocks most of the UN-B part of the ultraviolet spectrum with the amount screened out increasing with latitude. This current gradient in exposure provides a useful natural experiment demonstrating the effects of different exposure to UN-B radiation.

The health and environmental effects of ozone depletion are briefly described below; for a fuller explanation see Chapter 7 of the RIA and Chapters 7 to 16 of the EPA's risk assessment. EPA has attempted to quantify each effect, but insufficient data has made quantifying some effects impossible. Estimates are also uncertain because of possible changes in future technologies. Additional research to better understand UV-B effects is warranted. However, EPA has taken account of all possible ozone depletion effects in assessing the need for controls.

a. *Increased Incidence of Nonmelanoma Skin Cancers.* Laboratory studies and epidemiological evidence show a strong link between exposure to UV-B radiation and increased incidence of basal and squamous nonmelanoma skin cancers. (See Chapter 7 of EPA's risk assessment.) Several lines of evidence support this relationship: (1) Nonmelanoma skin cancers tend to develop in sun-exposed sites; (2) outdoor workers have higher incidence rates; (3) incidence rates are higher closer to the equator (correcting for differences in skin pigmentation); and individuals genetically suspectible to sunburn have a higher incidence of skin cancers.

Several researchers have correlated UV-B measurements with nonmelanoma skin cancer incidence data. Results from six studies show that a 1 percent depletion of total column ozone would lead to an increase in nonmelanoma skin cancer incidence of 4.8 percent to 7.6 percent.

Based on the expected growth in trace gas emissions for the middle scenario presented in Table 2, the resulting ozone depletion would lead to an increase in incidence of approximately 153 million nonmelanoma skin cancer cases among the United States population alive today and born by the year 2075. Based on current fatality rates from basal and squamous skin cancers, this increase in incidence could be expected to lead to an increase of 3.0 million deaths of people born during this same time period. Given the uncertainties associated with the appropriate dose-response relationship, this projection could fall within the range of 1.5 million to 4.5 million deaths.

b. *Increased Incidence of Melanoma Skin Cancer.* While the current incidence of melanoma skin cancer cases is small compared to nonmelanoma cases, the fatality rate is much higher. While no animal model and in vitro experimental evidence exists explaining the exact relationship between melanoma and UV-B radiation, based on the preponderance of evidence, EPA's risk assesssment concluded that increased UV-B exposure would increase the incidence of melanoma. Evidence in support of this conclusion includes: (1) Lighter skinned individuals, whose skin has less protective melanin, have higher melonoma incidence rates than darker skinned individuals; (2) early childhood exposure to sunlight appears to be linked to higher incidence rates; and (3) individuals genetically incapable of repairing sunlight-induced damage to cells have a higher rate of incidence.

Based on a range of estimates for uncertain factors, EPA's risk assessment developed a dose-response relationship which suggests that for every 1 percent increase in ozone depletion, the incidence of melanoma would increase by slightly less than 1 percent to 2 percent and the number of fatalities from melanoma would increase by 0.8 percent to 1.5 percent.

Based on the trace gas scenario which assumed a 2.7 percent average annual

growth in CFCs, and the resulting ozone depletion shown in Table 2, the number of melanoma cases in the United States would increase by 782,100 and the number of fatalities would increase by 187,000 for the population alive today and born by the year 2075. Given the uncertainties associated with the dose-response relationship, the number of deaths could fall within a range of 93,500 to 280,000.

c. *Increased Incidence of Cataracts.* UV-B radiation has been found to play a significant role in the formation of cataracts. Supporting evidence include animal laboratory studies and epidemiological studies. Based on the available research, a dose-response relationship was developed in EPA's risk assessment (See Chapter 10). Assuming trace gas trends and the resulting ozone depletion for the middle scenario described in Table 2, the number of cases of cataracts would increase by 18.2 million for the population in the United States alive today or born through 2075.

d. *Suppression of the Immune System.* Experimental studies show a suppression of the immune response system associated with exposure to UV-B radiation. Current research does not explain the exact mechanism by which the immune system is altered or the potential implications for a wide range of diseases. Limited studies do suggest, however, that UV-B induced suppression may increase the frequency of outbreak of herpes simplex virus and leishmaniasis (i.e., a skin disorder common in the tropics). No quantitative estimates of the potential harm related to immune suppression on these or other possible diseases are at this time possible.

e. *Damages to Plants.* Limited studies have shown that plants exposed to increased levels of UV-B radiation can be harmed. Initial studies showed a substantial vulnerability to UV-B exposure across a wide range of plants. However, these studies were conducted in laboratories or greenhouses and their results have not been replicated under field conditions where photorepair mechanisms may offset damage.

The only long-term controlled field study involves soy beans. This study found that enhanced levels of UV-B radiation simulating a 16 and 25 percent ozone depletion caused reductions in crop yield of up to 25 percent in the tested cultivar. Substantially smaller changes occurred in years when drought conditions also greatly reduced crop yields of the plants grown under naturally occurring conditions (i.e., the control plants). Because a wide range of crops have tested sensitive to increased exposure to UV-B radiation, but have not yet been tested under field conditions, the dose response relationship developed from the field tests of soy beans was used as the basis for estimating impacts on major grain crops in the RIA.

f. *Damage to Aquatic Organisms.* While studies to date have been limited in scope, it appears that increased exposure to UV-B radiation could adversely affect aquatic organisms and potentially disrupt the aquatic food chain. For example, studies suggest that phytoplankton remain close to the water's surface to facilitate photosynthesis. As a result, they would be susceptible to damage from increased UV-B radiation. Similarly, the larvae stage of many fish live at or near the water's surface and would also be susceptible to damage if ozone depletion occurs. A case study showed that a 10 percent ozone depletion would lead to a 6 percent loss in the larval anchovy population. Because a wide range of aquatic organisms have shown a sensitivity to increased exposure to UV-B radiation, but insufficient data exists for developing specific dose-response relationships, the case study examining the effects on anchovy larvae was used as the basis for estimating impacts on a limited group of shellfish and fin fish in the RIA.

g. *Accelerated Weathering of Outdoor Plastics.* Plastics exposed to the outdoor environment under current ultraviolet conditions contain light stabilizers or other additives to reduce damage from chalking, yellowing or brittleness. If UV-B radiation increases, damages would increase or greater expense would be incurred in protecting against the damages from such exposure. A relationship was developed between UV-B exposure and damage to outdoor products made of polyvinyl chloride and incorporated in the analysis presented in the RIA.

h. *Increased Formation of Groundlevel Ozone.* Preliminary studies have assessed the impact of increasedUV-B penetration on the photochemical reactions responsible for the creation of groundlevel ozone. These case studies suggest that groundlevel ozone would form earlier in the day and nearer to population centers, thus exposing more people to its harmful effects. Total amounts of groundlevel ozone would also increase. While substantial harm to human health and welfare could result from increased groundlevel ozone, because of limited data, only the impacts on crop loss were included in the RIA.

i. *Climate Related Impacts Due to Increases in Ozone-Modifying Gases.* CFCs and other gases that modify stratospheric ozone are also greenhouse gases and therefore contribute to concern about future global warming. Based on the rate of growth in trace gases assumed in the middle scenario presented in Table 2, by 2075 a global equilibrium temperature (i.e., the earth's temperature at the time when incoming energy is balanced against outgoing energy) increase of 5.8 degrees centigrade (10.4 degrees Fahrenheit) could be anticipated. Based on earlier reports by the National Academy of Sciences (1983), these estimates could be 50 percent higher or lower to reflect current uncertainties in climate model predictions. This temperature increase could be expected to affect water resources, agricultural productivity, forests, and endangered species. However, because of the difficulty in quantifying these effects, the RIA does not assess the extent of potential harm related directly to climate change.

One possible indirect effect of climate change is increased sea level rise. Based on current models and the trace gas scenario described above, the projected global warming could increase global sea level by 97.8 centimeters by 2075. However, because of the difficulty in quantifying impacts related to sea level rise, the analysis in the RIA is limited to extrapolation of several case studies quantifying damage from sea level rise to major port areas in the United States.

6. Conclusion

Based on the WMO assessment and EPA's recently completed risk assessment, the Agency believes that the current rate of growth in atmospheric levels of ozone-depleting gases is likely to result in substantial depletion of ozone which would lead to significant harm to human health and the environment. While many uncertainties exist and only limited studies are available in several of the areas of potential harm, the current evidence presents a strong case for action to substantially reduce current levels of use of the most potent ozone-depleting chemicals. A comparison of the potential costs of limiting CFCs and halons to the potential health and environmental benefits is presented below in Section VII.

V. The Montreal Protocol

The Montreal Protocol is a comprehensive agreement for dealing with the threat of stratospheric ozone depletion by man-made chemicals. It has three key components. First, it requires parties to significantly reduce their production and consumption of

certain ozone-depleting substances over the next decade. Second, it provides for revision of the reduction requirements based on scheduled, periodic assessments of available scientific, environmental, technical and economic information. Third, it imposes restrictions on trade in ozone-depleting products with nonparties to minimize nonparties' potential to deplete stratospheric ozone and to encourage nations to become parties. Each of these components is described in greater detail below.

The Montreal Protocol will take effect ("enter into force") on January 1, 1989, provided that at least 11 instruments ratifying the Protocol have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the covered substances, and that the Vienna Convention for the Protection of the Ozone Layer has entered into force. If these conditions have not been fulfilled by January 1, 1989, the Protocol will enter into force on the 90th day following the date on which the conditions have been fulfilled.

The Vienna Convention has so far been ratified by 14 nations, including the United States, as noted above. Twenty instruments of ratifications are required for its entry into force. The Department of State and the White House are currently in the process of requesting from the Senate its advice and consent to ratification of the Protocol, so that the President may ratify it on behalf of the United States.

A. Control Provisions

1. The Chemicals Covered

The Protocol identifies in Annex A two groups of ozone-depleting substances for control "controlled substances"). Group I includes CFC–11, –12, –113, –114, and –115. These chemical compounds are fully halogenated and therefore are strong potential ozone-depleters that are either widely used or potential substitutes for those chemicals which are now widely used.

Group II includes Halon 1211, 1301 and 2402. Because they contain bromine, these chemicals are even stronger potential ozone-depleters than the chemicals in Group I. However, they are currently emitted in small quantities relative to CFCs, substantial uncertainties exist as to their exact ozone depletion weights, and recent evidence suggests that their ozone-depleting potential may substantially depend on atmospheric chlorine concentrations.

The Protocol's coverage extends only to the specified chemicals in bulk form. Its definition of controlled substances excludes chemicals which are in manufactured products other than a container used for the transportation or storage of the chemicals. EPA is seeking comment on the implications of using this definition of controlled substances.

2. "Calculated Levels"

The Montreal Protocol does not place limits on each of the controlled substances. Instead, it places separate limits on the total ozone depletion potential of Group I and Group II controlled substances that a party produces and consumes. A party may consequently produce and consume any mix of the controlled substances within each of the Groups, so long as the total ozone depletion potential of the mix does not exceed the specified limits.

For purposes of calculating total ozone depletion potentials, the Protocol lists in Annex A the "ozone depleting potential" of all but one of the controlled substances. In the case of Halon 2402, it provides that the ozone depleting potential is "to be determined." More generally, it notes that the ozone depleting potentials "are estimates based on existing knowledge and will be reviewed and revised periodically," as provided under Article II, paragraph 9.

The Protocol uses the phrase "calculated levels" to refer to this weighting of controlled substances based on their relative ozone-depleting potentials. It provides under Article 3 that calculated levels be determined for each Group of controlled substances by multiplying the amount of emissions (in kilograms) of each controlled substance within that Group by the ozone depleting potential specified for it in Annex A, and adding together the resulting products.

3. Production and Consumption Limits

Just as the Protocol does not place limits on each controlled substance, it does not place limits on particular uses (e.g. aerosols, refrigeration) of the controlled substances. Instead, the Protocol limits each party's total production and consumption of Group I (CFCs) and Group II (halons) controlled substances for specified 12-month periods. It leaves up to each party how to stay within those limits.

Article 1 of the protocol defines production as "the amount of controlled substances produced minus the amount destroyed by technologies to be approved by the Parties." It defines consumption as "production plus imports minus exports of controlled substances." However, Article 3 provides that after January 1, 1993, any export of controlled substances to non-parties may not be subtracted in calculating the consumption level of the exporting party.

4. Timing and Magnitude of Limits

The limits imposed by the Protocol are generally defined in terms of 12-month periods and keyed to calculated levels of 1986 production and consumption. The year 1986 was chosen as the baseline for controls so that nations did not have an incentive to increase their production and consumption during 1987, when the protocol was being negotiated, in order to establish higher baselines.

a. *Group I controlled substances.* For Group I controlled substances, Article 2 of the Protocol requires each party to reduce in three steps the calculated level of its production and consumption of those substances.

For the first step, paragraph 1 of Article requires that if the Protocol enters into force on January 1, 1989, each party must limit its calculated levels of consumption and production to 1986 levels in the 12-month period commencing July l, 1989, and in each 12-month period thereafter. If the Protocol enters into force on a later date, each party must meet that limit in the 12 month period commencing on the first day of the seventh month following the date of entry into force of the Protocol, and in each 12-month period thereafter.

However, the Protocol permits each party to increase its production in each of the relevant control periods by up to 10 percent of its calculated level of 1986 production, provided that the increased production is used for one or both of two purposes. One purpose is to satisfy the "basic domestic needs" of developing countries operating under Article 5 of the Protocol. That Article allows developing countries who are parties to the Protocol and whose annual calculated level of consumption of both Group I and Group II controlled substances is less than 0.3 kilograms per capita on the date it becomes a party to the Protocol, to delay its compliance with the Protocol's control provisions by ten years after that specified in those provisions, so long as its per capita consumption does not exceed 0.3 kilograms.

With Article 5, the drafters of Protocol sought to fairly accommodate the "special situation" of developing countries whose 1986 consumption of the controlled substances was low relative to that of developed countries. By allowing developing countries to increase their consumption somewhat

and by allowing parties to increase their production to supply the developing countries, the drafters hoped to encourage developing countries to join the Protocol and make it unnecessary for them to build or expand any capacity for producing controlled substances in order to supply for a limited period of time their growing domestic needs.

The second justification for the parties to increase their production by up to 10 percent of 1986 levels is "for the purposes of industrial rationalization between Parties." Article 1 of the Protocol defines industrial rationalization as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiences or responding to anticipated shortfalls in supply as a result of plant closures."

For the second reduction step, paragraph 3 requires each party to limit the calculated level of its production and consumption in the period from July 1, 1993, to June 30, 1994, and in each 12-month period thereafter, to 80 percent of the calculated level of its 1986 production and consumption. Notably, the second reduction step takes effect beginning July 1, 1993, regardless of when the Protocol enters into force, so long as the Protocol has entered into force by that date. As in the case of the first step, each party may exceed its production limit in each control period by up to 10 percent of its 1986 production level, provided the production over the limit is used for one or both of the same two purposes described above.

Finally, for the third reduction step, paragraph 4 requires each party to limit the calculated level of its production and consumption in the period from July 1, 1998, to June 30, 1999, and in each 12-month period thereafter, to 50 percent of its calculated level of 1986 production and consumption. Each party is allowed to exceed its production limit by up to 15 percent of its calculated level of 1986 production, provided the production in excess of the limit is used for one or both of the purposes described above. The third reduction step will automatically take effect beginning July 1, 1998, so long as the Protocol enters into force anytime before July 1, 1998, and unless decided otherwise by a two-thirds majority of the parties present and voting, representing at least two-thirds of parties' total combined calculated level of consumption.

Paragraph 5 of Article 2 provides in limited circumstances for further increases in production of Group I controlled substances during any of the control periods discussed above. That paragraph permits parties to exceed the production limits set out in paragraphs 1 through 4 to the extent they receive, for the purposes of industrial rationalization, transfers of production from parties whose calculated level of 1986 production of Group I controlled substances was less than 25 kilotonnes. However, the total combined calculated levels of production of the parties involved in such a transfer of production may not exceed the production limits set out in Article 2. In addition, the secretariat of the Protocol must be notified of any such transfer.

b. *Group II controlled substances.* For Group II controlled substances, paragraph 2 of Article 2 requires that each party limit the calculated level of its production and consumption of those substances to the calculated level of its 1986 production and consumption of the same. Parties must meet that limit in the 12-month period commencing on the first day of the 37th month following the date on which the Protocol enters into force (January 1, 1992, if the Protocol enters into force on January 1, 1989), and in each 12-month period thereafter. However, each party may increase its production of Group II controlled substances in each control period by up to 10 percent of the calculated level of its 1986 production of those substances, provided that the increased production is used for the same purposes for which increased production of Group I controlled substances is allowed (i.e., supplying developing countries and for the purposes of industrial rationalization).

Article 2 of the Protocol includes several other paragraphs applicable only to particular parties other than the United States (e.g., paragraph 6 and 8). Consequently, those paragraphs will not be summarized here nor implemented by today's proposed rule.

B. Review and Revision Provisions

Built into the Protocol are mechanisms for revising its requirements in response to the latest information on stratospheric ozone depletion and its consequences. Article 6 requires the parties, beginning in 1990, and at least every four years thereafter, to assess the control measures set forth in Article 2 on the basis of available scientific, environmental, technical and economic information. It further provides for panels of experts in the relevant fields to issue reports on such information one year prior to each assessment.

Paragraph 10 of Article 2 permits the parties to change the coverage of the Protocol by revising the list of chemicals included in Group I or Group II of controlled substances, based on the periodic assessments required by Article 6. Should the parties add chemicals to either Group, paragraph 10 also permits the parties to decide on the mechanism, scope and timing of control measures that should apply to those substances. Decisions under paragraph 10 become effective when accepted by a two-thirds majority vote of the parties present and voting.

Paragraph 9 of Article 2 allows parties to adjust the ozone depleting potentials specified in Annex A and the control measures specified in Article 2, based on Article 6 assessments. Paragraph 9 provides that the parties first attempt to attempt to reach consensus on the need for any adjustment; otherwise decisions to make any adjustment must be adopted by a two-thirds majority vote of the parties present and voting representing at least fifty percent of the total consumption of the controlled substances of the parties.

C. Trade Provisions

Article 4 of the Protocol requires parties to impose specified restrictions on trade of ozone-depleting products with nonparties. The purpose of the trade restrictions is to reduce the potential of nonparties to adversely affect the ozone layer and to induce nonparties to join, or at least comply with, the Protocol.

Pursuant to paragraph 1 of Article 4, each party must ban the import of controlled substances from nonparties within one year of the Protocol's entry into force. Under paragraph 3, within three years of the Protocol's entry into force, the parties are to develop a list of products containing controlled substances (e.g., refrigerators, air conditioners); and within one year of the list having become effective, parties not objecting to the list are to ban imports of the listed products from nonparties. Under paragraph 4, within five years of the Protocol's entry into force, the parties shall determine the feasibility of banning or restricting products made with, but not containing, controlled substances (e.g., electronic equipment) and, if feasible, develop a list of such products; and within one year of the list having become effective, parties not objecting to the list are to ban imports of the listed products from nonparties.

Paragraph 5 calls on parties to "discourage" the export to nonparties of technology for producing and utilizing controlled substances. In a similar vein, paragraph 6 requires parties to "refrain" from providing new financial help for the export to nonparties of anything that would facilitate the production of controlled substances.

Article 4 also provides for several exemptions from the trade restrictions. Paragraph 7 provides that paragraphs 5 and 6 will not apply to products, equipment, plants or technology that contribute to the reduction of emission of controlled substances; and paragraph 8 exempts from the restrictions of paragraphs 1, 3 and 4 those nations that do not join, but are found to be in compliance with, the Protocol.

D. Other provisions

As for its implementation, the Protocol establishes requirements for parties to report relevant data (Article 7); an accompanying conference resolution calls for UNEP to convene a meeting of government experts to recommend to the parties measure for harmonizing and coordinating data on production, imports and exports of controlled substances. The Protocol also requires the parties at their first meeting to develop enforcement mechanisms and penalties for non-compliance (Article 8).

To ease compliance, the Protocol calls for the parties to cooperate in the research, development and exchange of information on emissions reduction technologies, substitutes for ozone-depleting products, and control strategies (Article 9). It also urges parties to lend one another, and particularly developing countries, technical assistance to facilitate participation in and implementation of the Protocol (Article 10).

VI. Proposed Action

A. Scope and Stringency

EPA proposes to implement the Montreal Protocol, provided that it enters into force and the United States ratifies it. Based on its assessment of the available evidence, EPA believes that the Protocol's requirements are an appropriate response to the potential ozone depletion problem at this time. Moreover, given that potential ozone depletion is a global problem requiring a global response, EPA believes that the Protocol is the most effective means of addressing the problem. For these reasons, EPA believes that implementation of the Protocol would best protect public health and welfare from the adverse effects of any ozone depletion.

The Protocol may be amended in ways that could significantly affect the stringency of the control regime it prescribes. For example, the Protocol provides explicitly that the fifty percent reductions in consumption and production required by Article 2, Paragraph 4, will not come into effect if the Parties by a two-thirds majority vote otherwise. In the event that any such amendment is adopted by the parties, EPA intends to conduct rulemaking to consider the effect the changes should have on the control regime prescribed by these regulations.

1. Basis for control requirements

EPA's assessment of the risks of ozone depletion indicates that the Protocol's control requirements are an appropriate response, particularly considering that the Protocol permits revisions of the requirements as new information warrants.

The chemicals covered by the Protocol are those which currently pose the greatest threat to stratospheric ozone. Moreover, the Protocol's different treatment of CFCs and halons reasonably reflects differences in what is known about the ozone depletion potential of the two classes of chemicals and the volume of their respective emissions.

The extent to which a chemical will contribute to ozone depletion depends on its chlorine and bromine content and its atmospheric lifetime. Table 3 lists these characteristics for those compounds considered for coverage. It illustrates that the chemicals in Group II (halons) have greater ozone depletion potentials than the chemicals in Group I (CFCs), and that Group I chemicals have greater ozone depletion potentials than CFC–22 and methyl chloroform. It also shows that carbon tetrachloride (CCl4) is a stronger potential ozone-depleter than several of the chemicals included in Group I.

TABLE 3.—RELATIVE OZONE-DEPLETING POTENTIAL OF CHEMICAL COMPOUNDS

Compound	Lifetime (years)	Ozone-depleting potential [1] (mass basis)
CFC–11	75	1.0
CFC–12	111	1.0
CFC–113	90	0.8
CFC–114	185	1.0
CFC–115	380	0.6
Halon-1211	25	3.0
Halon-1301	110	10.0
Halon-2402	([2])	6.0
HCFC–22	20	0.05
Methyl Chloroform	6.5	0.1
CCl 4	50	1.06

[1] Measured relative to CFC–11 which is set to 1.0. Values reported on a mass basis (i.e. per kilogram).

[2] Not reported.

Sources: Lifetime estimates are based on WMO (1986), and are summarized in EPA Risk Assessment, 1987, and EPA Regulatory Impact Analysis, 1987. Ozone depletion potentials for CFC–11, –12, –113, –114, –115, Halon-1211 and 1301, methyl chloroform, and CCl4 approximate those estimated by the Lawrence Livermore National Laboratory one-dimensional atmospheric model (Connell, personal communication). Ozone depletion potential for Halon-2402 reported at negotiations for *Montreal Protocol on Substances that Affect the Ozone Layer* (Bakken, personal communication). Values for CFC–11, –12, –113, –114, –115, and Halon 1211 and 1301 are listed in Annex A of the Montreal Protocol. These values are preliminary estimates based on currently available research and are likely to change over time as new information becomes available.

HCFC–22 and methyl chloroform are appropriately excluded from coverage for several reasons. First, as Table 3 shows, they are substantially less harmful to the atmosphere than the other chemicals considered for coverage. Second, they have short atmospheric lifetimes, so their future atmospheric concentrations can be more quickly reduced by emission limits if such reductions are determined to be necessary in the future. Third, both chemicals are potential substitutes for some of the more potent ozone-depleting chemicals covered by the Protocol.

In contrast, carbon tetrachloride is a relatively strong potential ozone-depleter, but its small volume of emissions makes it reasonable to exclude. Most carbon tetrachloride is consumed as a feedstock to producing CFCs and relatively little is emitted into the atmosphere.

CFC–114 and CFC–115 are reasonably included despite currently minor production levels because they are fully halogenated CFCs and therefore have long atmospheric lifetimes and are relatively strong potential ozone-depleters. Furthermore, if they were not covered, they could be substituted in some uses for the covered CFCs. If such substitutions were to occur, the risk of ozone depletion would not be substantially reduced. [2]

[2] It should be noted that CFC–115 can be used in a blend with HCFC–22 in several commercial refrigeration applications. While any such use of CFC–115 would be covered by the Protocol's control requirements, shifting from CFC–12 to this blend would substantially reduce the overall ozone-depleting potential of the chemicals used. Since this reduction in ozone depletion would occur without substantially altering product prices, industry may continue this trend as one means of reducing risks from ozone depletion.

Table 3 also highlights the substantial concern with Halon 1211, 1301 and 2402 as potential ozone-depleters. Because bromine remains in a chemically reactive state in the stratosphere, it is an extremely effective catalyst contributing to ozone depletion. However, while general agreement exists that the halons are, kilogram for kilogram, more potent ozone-depleters than CFCs, substantial uncertainties exist regarding their ozone-depletion potential. As a result, the ozone depletion weights provided in Table 3 and Annex A of the Protocol, particularly in the case of the halons, should be viewed as preliminary, and are likely to change as more information becomes available.

EPA examined the effect on future ozone depletion based on projections from a simplified one-dimensional atmospheric model. For a baseline case where CFCs are reduced by 50 percent over ten years, if the halons were allowed to continue to grow at expected rates, depletion of 3.2 percent would occur by 2075. By freezing halon production at current levels, the level of predicted ozone depletion would be reduced to 1.3 percent by 2075.

EPA's risk assessment also indicates that the Protocol's reduction requirements would substantially reduce potential depletion and thus the adverse health and welfare effects of depletion. As shown earlier in Table 2, based on model projections, continued trends in worldwide use of CFCs in the absence of regulation could result in substantial ozone depletion sometime during the early part of the next century.

The extent to which limits on CFC and halon production and consumption could reduce estimated ozone depletion is dependent, in part, on future trends in other trace gases, the extent to which other nations also reduce their consumption and production of ozone-depleting chemicals, and the ability of current models to predict future changes in ozone levels. The assumptions underlying this analysis are explained in detail in the RIA accompanying this rulemaking.

Several different levels of emission reductions and their effects on ozone depletion are presented in Table 4. These estimates are compared to the base case (no regulation) shown earlier in Table 2. They indicate that international action to freeze CFCs at 1986 levels alone would substantially reduce depletion compared to the base case, but would still result in approximately 6 percent depletion by 2075. In contrast, model projections indicate that the reductions required by the Montreal Protocol and the anticipated participation by most developed and developing nations, would result in less than 2 percent depletion by 2075. If the United States were to take additional steps beyond the 50 percent reduction required by the Protocol and reduce its CFC consumption by 80 percent, depletion would only be reduced by an additional 0.1 percent.

TABLE 4.—OZONE DEPLETION LEVELS FOR ALTERNATIVE REDUCTION OPTIONS

[Percent depletion of total column ozone]

Case	2000	2025	2050	2075
1. No controls	0.9	3.9	12.4	39.9
2. CFC freeze	0.8	2.3	4.3	6.2
3. CFC 20%	0.8	1.9	3.4	5.0
4. CFC 50%	0.8	1.5	2.3	3.2
5. CFC 80%	0.8	1.2	1.6	2.2
6. CFC 50%/Halon freeze	0.8	1.3	1.6	1.3
7. CFC 50%/Halon freeze/U.S. 80%	0.8	1.2	1.4	1.2
8. U.S. only/CFC 50%	0.8	3.1	8.5	20.4

Source: Cases 1–6 assume specified reductions are taken on the timetable specified in the Montreal Protocol and that 94 percent of the non-U.S. developed world and 65 percent of the developing world participate in making these reductions. Case 7 assumes that the U.S. takes unilateral action. A more detailed discussion of assumptions is included in Chapter 5 of the RIA.

Given the many variables and uncertainties involved in predicting ozone depletion far into the future, the Protocol's control requirements achieve a reasonable degree of risk reduction. Moreover, the Protocol includes review and revision mechanisms for obtaining more or less risk reduction as advances in modelling capability, new data, or other relevant developments warrant.

The Protocol's trade provisions are also a reasonable means of reducing the risk of stratospheric ozone depletion. As model projections indicate, broad observance of the Protocol is needed to effectively protect stratospheric ozone, and nations that neither joined nor complied with the Protocol would endanger the ozone layer. Implementation of the Protocol's trade restrictions would reduce the potential for those nations to adversely affect the ozone layer and would induce them to join the Protocol.

2. International Considerations

Taken as a whole, EPA believes that the Protocol effectively addresses the global problem of potential ozone depletion. The Agency thus considers it unwise to risk undermining the agreement by deviating from its requirements.

As explained earlier, EPA believes that the available evidence fully supports the need for the Protocol's control requirements. Moreover, failure by the United States to meet all the requirements would set a damaging precedent. For the Protocol to be effective, nations cannot pick and choose which of its provisions to implement.

Requiring the United States to do more than the Protocol requires could also be counterproductive. Were EPA to implement the reductions required by the Protocol regardless of whether the Protocol enters into force, or require greater reductions than the Protocol requires, other nations might have less incentive to join the Protocol. The failure of many nations to join the United States in banning CFCs in aerosols demonstrates that unilateral United States action does not necessarily lead other nations to reduce their emissions, and raises the concern that other nations might "free-ride" on United States reductions to avoid making costly reductions themselves. In any event, as noted earlier, even if EPA were to require that the United States take an additional step beyond the Protocol and reduce its consumption by 80 percent, potential ozone depletion would only be reduced by an additional 0.1 percent.

B. Control Strategy

As noted earlier, the Montreal Protocol leaves up to each party how to achieve the required reductions in production and consumption. EPA's goal in implementing the Protocol is to provide the market place with as much flexibility as the Protocol permits to achieve the required reductions in the most economically efficient manner possible.

1. Economic Incentives Versus Engineering Controls/Bans

Two general approaches for achieving the Protocol's required reductions of controlled substances were evaluated by the Agency. One approach relies on market incentives to achieve low cost reductions in the use of CFCs and halons. Under this approach EPA could either directly restrict the supply of CFCs and halons or assess a regulatory fee on their use. Either case would increase costs of using CFCs which would give those firms with relatively low-cost reduction options an economic incentive to reduce their use of these chemicals. Those firms where no such reduction opportunities exist would continue to use CFCs, although they would have to pay a higher price.

According to economic theory, providing firms with an incentive to make cost-effective reductions should

minimize the costs to society of meeting the regulatory goal. Three alternative economic incentive approaches were evaluated: marketable rights based on auctions ("auctioned rights"), marketable rights allocated by quota to past producers and importers ("allocated quotas"), and regulatory fees.

The second general approach is the use of traditional engineering controls and product or chemicals bans ("engineering controls or bans"). It involves EPA deciding which specific industries or uses of CFCs and halons should be regulated. EPA would make this decision based on the availability of low cost reductions, the quantity of reductions achieved, the administrative burdens of monitoring compliance, the enforceability of the regulation, and the impacts on small businesses. This approach is EPA's usual method of regulating pollution. It was considered alone, and a supplement to allocated quotas based on the extent to which CFC users may be postponing the adoption of low cost reductions "hybrid option").

EPA evaluated each of these options in light of the following criteria: Certainty of achieving the desired environmental goal; economic costs and efficiency in meeting that goal; equity considerations; administrative costs and enforceability; legal certainty; and impacts on small business.

Each of the options has specific advantages, but also raises possible problems. The regulatory fees option should provide for least cost reductions, while providing clear price incentives for users to reduce their reliance on CFCs and halons and for producers to introduce chemical substitutes. However, regulatory fees alone would not ensure that the freeze or reductions of controlled substances would be achieved during the time period required by the Protocol. For example, more firms than anticipated could decide to pay the fee and continue using CFCs or halons. Engineering controls or bans would pose the same problem, since uses of CFCs or halons that were not regulated could continue to grow, possibly offsetting reductions from the regulated uses.

Engineering controls or bans would also be administratively burdensome, considering the many thousands of small firms that use CFCs or halons. In the case of regulatory fees, another concern is whether EPA has the legal authority to impose a fee which would result in revenues in excess of the costs of operating the program; regulatory fees might be invalidated as beyond the Agency's authority under the Clean Air Act. (The legal issues concerning fees are discussed in a separate analysis prepared by EPA which is contained in the docket.)

The auctioned rights option would entail auctioning rights allowing a specified amount of production or consumption of CFCs or halons. The auctions would be open to any interested party. The total amount of production and consumption rights auctioned would reflect EPA's regulatory goal. Revenues from the auction would go to the United States Treasury. Firms seeking to use CFCs or halons would have to obtain rights at auction or by purchasing them from other firms on a secondary market. Alternatively, to the extent CFC or halon producers or suppliers had not purchased rights at auction, final users of these chemicals could simply buy them directly through their existing channels of supply. EPA would monitor compliance by checking whether producers and importers held rights authorizing their production and consumption.

Like all the economic incentive approaches, auctioned rights should provide for economically efficient reductions. In addition, any revenues from the auction would go to the general treasury.[3] Concerns have been raised, however, that auctions, at least initially, would create large uncertainties for firms about price and availability, and could lead to speculation and short-term hoarding of permits (beyond a firm's actual needs) during the auction process.[4] Also, legal questions have been raised concerning EPA's authority under the Clean Air Act to implement an auction to allocate rights. (These issues are also discussed in the EPA analysis contained in the docket.)

EPA favors simply allocating rights equal to the quantity of allowable production and consumption to producers and importers of controlled substances in 1986. Since producers and importers are small in number (probably no more than 15 to 20), it would be far less burdensome to allocate rights to them instead of users. Similar to auctioned rights, firms allocated rights could buy and sell them to respond to changes in market conditions. Price increases as a result of decreased supplies should provide firms using CFCs or halons with the economic incentive to make the lowest cost reductions of controlled substances. Unlike auctioned rights or regulatory fees, this option avoids raising any legal issues concerning EPA's regulatory authority.

The major concern about the allocated quotas option is one of equity—should current CFC and halon producers and importers reap a possible windfall profit from the scarcity created by EPA's regulation? The extent to which CFC and halon prices increase over time will determine the magnitude of this potential gain.

A second concern (one that applies to all of the economic incentive approaches) is that certain industries where low-cost reductions are possible may decide not to make these reductions, at least for a time, and may elect instead to continue their use of CFCs or halons. For example, CFCs are a very small part of the costs of a computer. As a result, firms in this industry may be better able to pass on price increases to their customers. If available inexpensive reductions are not realized by these or other industry groups, then CFC and halon prices could increase more than they otherwise would, resulting in additional economic burden on all firms using these chemicals. The impact of this burden could be particularly large in the near term, before new chemical substitutes become available.

These two concerns are discussed in greater detail in a later section which describes potential remedies to these problems and presents the alternative regulatory approaches still under consideration by the Agency.

2. Design of Allocated Quota System

EPA proposes to implement the Montreal Protocol using a system of allocated, marketable "rights." [5] The Protocol's limits on production and consumption would be translated into allocated quotas of production rights and consumption rights. The Protocol's separate treatment of Group I and Group II controlled substances would be reflected in separate rights for each group of controlled substances. Similarly, the Protocol's definition of

[3] The argument advanced by economists is that equity would be served were revenues from the auction or regulatory fees to go to the Treasury because the revenues would represent payments from those who damage the environment to those who are damaged, i.e., citizens.

[4] Speculation can be an aid to market functioning. Of course, if speculators enter the market and bid up the price to levels higher than market value, they will lose money in their subsequent efforts to sell in the aftermarket. However, to the extent prices are bid up by speculators and remain higher for some time, small firms using CFCs or halons may be adversely affected.

[5] The word "rights" is used as a matter of convenience. The "rights" that would be created by the regulations are really privileges, since, if future circumstances or shifts in the regulatory approach warrant changes in allocations of controlled substances, EPA may by rulemaking modify the amount of rights allocated.

limits in terms of "calculated levels" of Group I or Group II substances would be carried over into the definition of rights. (As explained earlier, calculated level is determined by multiplying the emissions of each controlled substance by its ozone depletion weight and adding together the resulting products for all the controlled substances within each Group.) Thus, rights would be specified in terms of calculated level of Group I or Group II controlled substances, so that holders of rights could select any mix of controlled substances within each Group, provided that the total calculated level of the mix did not exceed the calculated level of the rights held.

a. *Chemical Coverage and Ozone Depletion Weights.* The regulations would include the same chemicals in Group I and Group II of controlled substances as the Protocol does. They would likewise adopt the Protocol's ozone depletion weights for each of the controlled substances. However, the regulations would also provide an ozone depletion weight for Halon 2402, whereas the Protocol leaves the weight for that halon for later determination. EPA is proposing a 6.0 weight for Halon 2402 based on its assessment of the chemical's ozone depletion potential. The Agency will also propose this weight for adoption by the Protocol parties; but should the parties establish a different weight and scientific evidence support their choice, EPA would revise its regulation to conform to the Protocol. In the meantime, EPA believes it appropriate to propose its assessment of the ozone depletion weight of Halon 2404 to give industry a basis for judging their compliance with the halon limit.

b. *Production Rights and Consumption Rights.* Production rights held by firms would authorize them to produce a calculated level of controlled substances equal to the calculated level of rights they hold.[6] Rights would be apportioned among producers of controlled substances according to the calculated level of controlled substances each produced in 1986, the baseline year established by the Protocol. The total of these "baseline production rights" would thus equal United States production in 1986.

Consumption rights would authorize holders to *produce or import* a calculated level of controlled substances equal to the calculated level of the rights held. As described earlier, the Protocol defines consumption as production plus imports minus exports, and keys its consumption limits to 1986 levels of these three components of the consumption equation. Since exports of controlled substances are subtracted from, and therefore aid compliance with the consumption limit, no rights would be required to export (although exporters would be required to report their exports to EPA). Nor would users of CFCs or halons ever become involved with either production or consumption rights—only producers, importers, and exporters would be directly involved in this proposed regulatory system.

Baseline consumption rights would be apportioned to producers and importers, but in a manner that takes account of 1986 exports. Importers would be allotted baseline consumption rights equal to the calculated level of their 1986 imports of controlled substances. Producers would be apportioned baseline consumption rights equal to the calculated level of their 1986 production, less a proportionate share of the calculated level of the United States' total 1986 exports. The apportionment formula for determining each producer's consumption rights would be the producer's 1986 production multiplied by a correction factor equivalent to:

$$\frac{[(\text{U.S. 1986 production}) - (\text{U.S. 1986 exports})]}{(\text{U.S. 1986 production})}$$

EPA believes producers' baseline consumption rights should be reduced to reflect exports because producers generally have been the major exporters of controlled substances.

In a separate rule also appearing in today's **Federal Register**, EPA is requiring producers, importers and exporters of controlled substances in 1986 to provide the Agency with the information needed to determine the United States' 1986 production and consumption levels, individual producer's baseline production and consumption rights, and individual importer's baseline consumption rights. Based on the information received, the Agency plans to publish proposed baseline apportionments in time for final apportionments to be included in this rule when it is promulgated on August 1, 1988.

As their definitions suggest, production and consumption rights overlap, but not entirely. To produce controlled substances, a firm must have both production and consumption rights; to import controlled substances, it need have only consumption rights. The overlap simply mirrors the overlap of the Protocol's limits on production and consumption (i.e., production plus imports minus exports). Several examples illustrate how the two limits may interact and how the proposed regulatory system would accommodate these interactions.

Assume the United States in 1986 produced 100 units, imported 10 units, and exported 5 units of Group I controlled substances. United States 1986 production would be 100 units and its 1986 consumption 105 units. After the Protocol's freeze on Group I controlled substances took effect, the United States could not produce up to 105 units of controlled substances for domestic consumption even though it would stay within its consumption limit, because it would exceed by 5 units its production limit. Unless the United States gained the right to increase its production in the manner permitted by the Protocol (described below), it could only obtain the remaining 5 units of controlled substances permitted by the consumption limit by importing them. To restate this scenario in terms of rights, United States producers would be granted production rights for 100 units of controlled substances. Producers and importers would be granted consumption rights for 105 units. Thus, producers could produce up to 100 units of controlled substances using all of their 100 production rights and 100 of the 105 available consumption rights; the remaining consumption rights could be used to import controlled substances.

c. *Allowance for Additional Consumption Rights.* A slightly different example illustrates another aspect of the proposed regulatory system. Assume the United States in 1986 produced 100 units, imported 5 units, and exported 10 units of controlled substances, for a 1986 production level of 100 and a 1986 consumption level of 95. In this case, baseline consumption rights would not be plentiful enough to permit producers to produce all 100 units for which they held baseline production rights. The Protocol would permit production of all 100 units, provided that at least 5 are

[6] Production rights would be required for virgin production, but not for recycling, of controlled substances. Production used and consumed as a chemical intermediary is also exempt. Further, the Protocol defines production of controlled substances as the amount produced minus the amount destroyed "by technologies to be approved by the parties." Because no such technologies have yet been approved, this proposal does not include any provision for credits for destruction. However, EPA intends to work with industry in the future to review existing and new destruction technologies and, if appropriate, submit these technologies to the Parties for their approval.

exported so that the consumption limit is not exceeded. The proposed regulations would permit the same by granting additional consumption rights upon proof of exports of controlled substances to any nation until January 1, 1993, and to any party of the Protocol beginning January 1, 1993.[7] If a producer held production rights for 12 units and consumption rights for 10 units, he could produce the 10 units for which he held production rights, export 2 of the units, and receive from EPA additional consumption rights for 2 units. With those additional consumption rights, he could produce all 12 units for which he held production rights.

The regulations would require controlled substances to be exported before additional consumption rights would be granted, to ensure that the United States stayed within its consumption limits. If EPA were to grant additional consumption rights based merely on a producer's plan or agreement to export controlled substances, the United States could exceed its consumption limits if the producer did not ultimately export the substances but nonetheless increased his production as allowed by the additional consumption rights he received. The regulations would moreover require that exports reach their destination—not just leave the United States—before additional consumption rights would be granted. This requirement is necessary to track controlled substances for purposes of determining parties' compliance with the consumption limits. Otherwise, on the last day of any control period, parties could export controlled substances as needed to stay within consumption limits, but since the exported controlled substances would likely not arrive at their destinations until the following control period, no party would have to include the controlled substances in the tally of its consumption.

Anyone who exports controlled substances could obtain consumption rights equal to the calculated level of controlled substances exported. If the exporter were not also a producer, he could sell the consumption rights to a producer. As further explained below, all rights created by the regulations would be transferable subject to EPA verification that the transferor in fact possesses the rights being transferred.

[7] As noted earlier, the Protocol requires that, beginning January 1, 1993, only exports to parties will be subtracted in determining consumption. EPA will in future rulemakings promulgate a list of parties based on the list kept by the Secretariat of the Protocol.

To illustrate another possible scenario, assume total United States exports increased over 1986 levels, so that the United States was below its consumption limit. While the United States could not increase its production (except under the circumstances described below), it could increase its imports up to the level permitted by the consumption cap. To restate this in terms of rights, if a producer with production rights for 10 units and consumption rights for 12 units exported 6 units, he could acquire additional consumption rights for 6 units and import a total of 8 units.

As the above examples demonstrate, the Protocol's production and consumption limits can interact in many ways. EPA has tried to create a regulatory system flexible enough to accommodate the possible interactions. Comments are requested on whether the proposed system does provide adequate flexibility and how it might be improved.

d. *Scheduled Reduction of Production and Consumption Rights.* The regulatory system must also provide for the Protocol's scheduled reductions. The proposed regulations would do so by reducing the number of rights granted over time. For Group I controlled substances, it would grant producers and importers 100 percent of their apportioned baseline production and consumption rights for the first reduction step; 80 percent of the same for the second reduction step; and 50 percent of the same for the third. For Group II controlled substances, the regulations would grant 100 percent of the apportioned 1986 baseline production and consumption rights for all the applicable control periods.

The proposed regulations do not yet specify the control periods to which the grants of rights would apply, since the Protocol makes the timing of the freezes of Group I and Group II substances dependent on when the Protocol enters into force. EPA solicits comments on the appropriate time period for which these rights would apply. EPA would promulgate the dates of the control periods in a future rulemaking after the Protocol has entered into force and before the Protocol's requirement have taken effect.

Even after the date of entry into force is known, however, a question will remain as to the proper dates for the freeze of Group I controlled substances at 1986 levels. The issue arises from the potential discontinuity in the timing of the first and second steps of the reduction schedule for Group I controlled substances. The Protocol specifies 12-month control periods for all three steps of the Group I reduction schedule. But while the Protocol provides that the second step will take effect beginning July 1, 1993, it makes the start of the first step dependent on when the Protocol enters into force. If the Protocol enters into force on January 1, 1989, the freeze will take effect beginning July 1, 1989. In that case, the end of last freeze control period will coincide with the start of the first control period for the second step. On the other hand, if the Protocol enters into force on any date other than January 1st, there would be overlapping control periods, unless EPA defined the last control period as lasting less than 12 months.

To avoid this problem, EPA intends to promulgate dates for the last control period of the freeze that do not overlap with the first control period of the 80 percent step. Unless the Protocol enters into force on January 1, the last control period of the freeze would be less than 12 months long, and the rights granted for that period would be reduced accordingly. EPA solicits comments on this approach.

e. *Allowance for Additional Production Rights.* As explained earlier, the Protocol allows parties to exceed their production limits by certain amounts under certain circumstances. For the first and second steps of the reduction schedule for Group I controlled substances and for the freeze of Group II controlled substances, the Protocol permits parties to exceed the applicable production limits by 10 percent of the calculated level of their 1986 production in order to supply the "basic domestic needs" of parties that are developing countries and "for the purposes of industrial rationalization." For the third step of the Group I reduction schedule, the Protocol allows production to exceed the 50 percent production limit by 15 percent of 1986 production levels for the same two purposes. These allowances are termed "potential production rights".

EPA believes that the driving force behind the developing countries and industrial rationalization provisions was to minimize the construction of new manufacturing capacity, particularly during the initial period when states are deciding whether to adhere to the Protocol. So viewed, the provisions for 10 and 15 percent increases in production are intended to allow nations that already have substantial installed manufacturing capacity to make available limited amounts of supplies to satisfy demand from developing nations, and to offset for losses in production that might be sustained by shutting

down inefficient or obsolete facilities. The cushion provided by the allowable "potential production rights" will provide sufficient flexibility in the market to accommodate these needs without undue price increases that might encourage construction of new manufacturing capacity.

Accordingly, EPA proposes to implement the provisions for 10 and 15 percent production increases by allocating "potential production rights" that could be converted to production rights upon proof of exports of controlled substances to parties. Every producer granted baseline production rights would also be granted potential production rights equal to 10 or 15 percent of his baseline production rights, depending on the control period and group of controlled substances involved. A producer could then obtain authorization from EPA to convert his potential production rights to production rights to the extent he exported controlled substances to parties.

Because the industrial rationalization provision refers to transfers between *parties*, and the developing country provision similarly limits production increases to those necessary to supply *parties* that are developing countries, EPA would authorize conversion of potential production rights only to the extent controlled substances have been exported to parties. In future rulemakings, EPA would promulgate, and from time to time revise, as Appendix B to these regulations, a list of nations that are parties to the Protocol. That list would be based on the list of parties kept by the Secretariat of the Protocol.

EPA would otherwise issue notices authorizing conversion of potential production rights on the same basis as the Agency would grant additional consumption rights upon proof of exports. In both cases, EPA would require that the exported controlled substances arrive in the country importing them before EPA would issue the authorizing notice or grant consumption rights. EPA would also limit the authorization or the consumption rights to the control period in which the exports arrived in the importing country.

For a producer to make use of production rights converted from potential production rights, he would also have to obtain consumption rights in the same amount. Since any controlled substances he exported to a party would provide the basis for obtaining additional consumption rights, EPA would treat requests for authorization to convert potential production rights as requests for additional consumption rights, as well. Therefore, upon proof of exports to parties, EPA would (1) issue a notice authorizing the conversion of potential production rights equal to the calculated level of the exports, for the control period in which the exports arrived in the importing nation, and (2) grant consumption rights in the same amount for the same control period.

Anyone (not just producers) exporting controlled substances to parties could obtain *authorization* to convert potential production rights, whether or not he held potential production rights. If he did not hold potential production rights, he could either purchase such rights from, or sell his authorization to, someone who does. If enough controlled substances were exported to parties, it would be possible for EPA to issue authorizations to convert more potential production rights than there were potential production rights to convert. In that case, authorizations beyond those needed to convert all available potential production rights could not be used without violating the terms of the Protocol and would therefore be useless.

f. *Transfers Involving 25 Kilotonne Parties.* The Protocol also allows a party to increase its production beyond the 10 or 15 percent allowances, if it receives a transfer, "for the purposes of industrial rationalization," of a calculated level of production from another party whose 1986 calculated level of production was less than 25 kilotonnes. However, unlike the other provisions related to industrial rationalization, this section of the Protocol provides that "the total combined calculated levels of production of the Parties concerned (may) not exceed the (Protocol's) production limits."

EPA proposes to implement this provision by permitting anyone ("the recipient") to obtain production rights in excess of baseline production rights to the extent a "25-kilotonne party" agrees to transfer to him some amount of the calculated level of production that the party is permitted under the Protocol and to decrease its production by that amount. In a future rulemaking, EPA would promulgate a list of 25-kilotonne parties as Appendix D to these regulations. EPA would adopt a list of 25-kilotonne parties compiled by the Protocol parties, but absent such a list, the Agency would compile its own based on information available from the Secretariat of the Protocol and the parties themselves.

EPA believes that any transfer meeting these requirements would serve the purposes of industrial rationalization, which are to "achiev[e] economic efficiencies" or "respond[ ] to anticipated shortfalls in supply as a result of plant closures." EPA could reasonably assume that any such transfer would "achiev[e] economic efficiencies" since the United States recipient of a 25-kilotonne party's production presumably would not seek that production unless it were economically efficient for him to produce it.

The regulations would require that the recipient of a 25-kilotonne party's production obtain from the principal diplomatic representative in that party's embassy in the United States a document clearly stating that the 25-kilotonne party will decrease its production by the amount it is transferring to the recipient. The 25-kilotonne party's agreement to decrease its production by the amount being transferred would ensure that the total combined calculated levels of production of the United States and the 25-kilotonne party would not exceed the limits applicable to the two parties under the Protocol. Upon obtaining a copy of this document and other requisite information, EPA would notify the Secretariat of the Protocol of the transfer, as required by the Protocol, and issue a notice granting the recipient production rights equivalent to the calculated level of production transferred.

g. *Transfer of Rights.* As pointed out earlier, all of the rights and authorizations obtained pursuant to the regulations would be transferable. However, for a transfer to be effective, the transferor would first be required to submit a transfer request to EPA. The Agency would maintain records of who holds what rights or has been issued authorizations to convert potential production rights. If EPA's records indicated that the transferor possessed sufficient rights or authorization to cover the transfer request, EPA would issue a notice of transfer to the transferor and transferee. The transfer would take effect as of the date EPA issued the notice, and EPA would revise its records to reflect the transfer.

EPA is proposing these transfer requirements because of the need to assure compliance with the Protocol. A fraudulent transfer of rights or authorization would not only result in higher emissions of ozone-depleting substances, but risk the United States exceeding the Protocol's limits. Thus, EPA has provided for the procedural safeguards described above to minimize the possibility of fraudulent or mistaken transfers.

h. *Prohibitions on Production or Import in Excess of Rights.* The

capstone of the proposed system of production and consumption rights would be the prohibitions on production and import of controlled substances. The regulations would prohibit anyone from producing a calculated level of controlled substances in excess of the amount of "unexpended" production rights held by that person. Similarly, they would prohibit anyone from producing or importing a calculated level of controlled substances in excess of the amount of "unexpended" consumption rights held by that person. A person's "unexpended" production or consumption rights would be the total of the calculated level of production or consumption rights he holds, minus the calculated level of controlled substances the person has produced and/or imported, depending on the type of rights involved. In short, the prohibitions prevent anyone at any time from producing or importing controlled substances in amounts greater than the unused production and consumption rights that he holds at the time.

i. *Import Bans.* In addition to implementing the Protocol's production and consumption limits, the regulations would also enact the Protocol's ban on imports of controlled substances from any nonparty, except nonparties found to be in compliance with the Protocol's requirements. The Protocol requires that parties impose, and the regulations would accordingly implement, that ban beginning one year after the Protocol enters into force. In future rulemakings, EPA would promulgate, and from time to time revise, as Appendix C to these regulations, a list of nonparties found to be in compliance with the Protocol.

The Protocol also provides for parties to impose import bans on products containing and products made with, but not containing, controlled substances. However, those provisions are not self-executing, as they require further action of the parties to implement. Thus, EPA is not proposing to impose further import bans, but will promulgate such bans in future rulemakings when the parties have taken the necessary action. EPA is nonetheless seeking comments on products that should be covered by the future bans. The Agency is also seeking comment on whether any additional steps (e.g., labelling of products containing or produced with controlled substances from nonparties) might be warranted either prior to or in conjunction with the trade restrictions contained in the Protocol.

j. *Reporting and Recordkeeping.* EPA is considering a variety of alternative recordkeeping and reporting requirements. One option is to require firms involved in the production of the regulated chemicals to maintain the following information: Weekly records of the quantity of regulated chemicals produced at each facility including controlled substances produced and consumed for feedstock purposes; and weekly records of the quantity and purchaser of controlled substances produced at each plant. These records would be retained for a period of four years.

In addition, EPA would require monthly reports from producers of the controlled substances for each plant and for all plants owned by the same company within 15 days after the end of each month. The reports would include the following: summaries of monthly production of the controlled substances; monthly summaries of the quantity of sales for each of the controlled substances; the quantity and source of material containing recoverable controlled substances and the quantity of controlled substances recovered; summaries of total monthly and control-period-to-date production of the calculated levels of Group 1 and Group 2 controlled substances; and total rights the producer holds at the end of each month.

Another approach and the way EPA is presently leaning is to require the following information: daily records of the quantity of the CFCs and halons produced at each facility including controlled substances produced and consumed for feedstock purposes; daily records of the quantities of HCFC–22 and CFC–116 that may also be produced at the same facilities; continuous records of reactive temperature and pressure within the primary reactor and initial distillation column at each facility during the production operations; daily records of purchases and use of the following materials consumed in producing the regulated chemicals at each plant: carbon tetrachloride, perchloroethylene, chloroform, hydrofluoric acid, hydrochloric acid, bromine, HCFC–22 and CFC–23; and daily records of the quantity and purchaser of controlled substances produced at each plant. These records would be retained for a period of four years.

Under this approach, monthly reports required within 15 days of the end of each month would include the following: summaries of monthly production of the controlled substances, specifying the quantity used and consumed as feedstocks, and production quantities of HCFC–22 and CFC–116, if they are produced at the same facility; monthly summaries of the quantity of sales for each of the controlled substances; description of any material alterations in the annual production plan required for each facility by EPA (as described below); description of any shifts in operating characteristics; the quantity and source of material containing recoverable controlled substances and the quantity of controlled substances recovered; summaries of total monthly and control-period-to-date calculated production levels of Group I and Group II controlled substances; and the producer's total consumption rights, production rights and authorization to convert potential production rights to production rights.

EPA is leaning toward requesting daily instead of weekly records of production since daily records will provide more precise information on production. The more precise information will aid in evaluating trades (determining expended versus unexpended production rights), pinpointing violations, and will ease checks on production records when using process parameters (quantities of raw materials, temperature, pressure) to calculate production. It is not expected that daily records will impose a significant burden on the industry since information currently available to EPA indicates that manufacturers already keep production data on a once per shift basis. Records of raw materials, process parameters, and other CFC compounds (HCFC–22 and CFC–116) produced at the regulated facilities are requested to provide a check on production records. Records of sales of controlled substances would provide not only a check on production records, but would provide EPA information on whether exporters have actually purchased the reported quantity of controlled substances exported. Records of imports and exports are requested on a daily basis since EPA will need to check the date of import/export against records held by U.S. Customs and the U.S. Census to verify compliance.

This information would provide EPA with a double-check on whether producers and importers are staying within their production and consumption rights. EPA solicits comment on both of these approaches to reporting and recordkeeping requirements. EPA is specifically interested in the level of reporting necessary to ensure compliance with permit restrictions.

Whatever approach is chosen, failure to maintain the required records or file these reports in a timely manner may result in EPA assuming production for the unknown period at maximum

capacity for the purposes of evaluating compliance.

Records and reports could be required for each facility at each plant owned by a company or they could be required on an aggregate, company-wide basis. EPA is presently inclined to require that all production and sales records be maintained for individual production facilities, but that monthly reports to EPA be submitted containing information for both individual plants and aggregated for all the plants owned by a firm.

With this approach, EPA would not grant rights for each CFC or halon production facility or plant, but will instead grant rights that are company-wide. However, to facilitate enforcement with respect to these rights, EPA will require that firms inform EPA on an annual basis of their intended production plans for each facility and plant and notify the Agency of any significant shifts in the location or quantity of production described in these plans as part of their monthly reports. While compliance with these annual production plans will not be binding, they provide useful information to EPA for purposes of compliance monitoring. EPA solicits comments on the sufficiency of these requirements.

For firms engaged in the import of controlled substances, EPA is also considering a variety of alternative reporting and recordkeeping requirements. EPA is presently inclined to require the maintenance of daily records of the quantity of controlled substances, either alone or in mixtures, that are imported; the dates and ports of call of imports; the date and port of entry into the United States or its territories; the dates on which and the country in which the imported controlled substances were produced; and a name and address from which additional information can be obtained. Monthly reports by importers to EPA must include summaries of the above information along with totals for control-period-to-date and the importer's total consumption rights at the end of the month. EPA will further verify reported import activities with information obtained by U.S. Customs and with information reported through data presented by other nations to the Secretariat to the Protocol.

Exporters must report all exports not previously reported in the context of obtaining consumption or production rights. Reports would be required on a monthly basis and include: name and address of exporter and recipient of the exports; the exporter's Employer Identification Number (EIN); the type and quantity of controlled substances exported; the date and port from which the exports were shipped; the date and country in which the exports arrived; and the source from which the exported controlled substances were purchased.

To facilitate the collection of the relevant information, EPA is requesting the U.S. Department of Commerce for permission to obtain copies of Shipper's Export Declarations (Form 7525–V) filed by exporters of controlled substances. EPA is also requesting the Customs Service for permission to obtain copies of "Entry Summaries" (Form 7501) filed by importers of controlled substances. EPA solicits comments on these reporting and recordkeeping requirements.

k. *Compliance and Penalties.* Based on its review of reports and records and possible site inspections, EPA would determine whether firms are in compliance with the regulations. The regulations would define a violation as the production or import of every kilogram of controlled substances in excess of unexpended production or consumption rights, or in contravention of the ban on imports from nonparties.

Under section 113(b) of the Clean Air Act, penalties of up to $25,000 per day per violation can be assessed. Thus, a firm that produced two kilograms of controlled substances beyond its rights would be potentially subject to a maximum fine of $50,000. In addition to the various remedies under the Clean Air Act, EPA has the authority to seek injuctive relief to limit further production or sales, and to seek to have any activity in excess of unexpended rights subtracted from future year's rights. Also, the Agency may bring criminal penalties against knowing violators, as set forth under section 113(c) of the Act.

Given that compliance with the terms of the Montreal Protocol is determined on a twelve month basis, the control period would be for one block year (unless otherwise specified), and EPA would track compliance over that same period. However, tracking compliance on an annual basis presents some practical limitations—in extreme circumstances a firm could go out of compliance only at the end of the period. With a shorter averaging time or a rolling average, compliance could be judged earlier or more frequently. As an alternative to the block annual control period, EPA could specify a rolling twelve-month control period where compliance could be measured at the end of each month based on the previous twelve months of production. This alternative would provide greater assurance that the United States satisfies its obligations under the Montreal Protocol, but could somewhat limit the flexibility of firms in meeting shifting market conditions during the course of a year. EPA proposes to initially specify compliance on a block one year control period, but will consider shifting to a twelve-month rolling control period if difficulties in ensuring compliance develop. EPA may impose the twelve-month rolling quota on firms that have violated production or consumption rights or in cases where compliance monitoring is hindered.

1. *Effective Date.* The proposed regulations would not take effect until the Montreal Protocol enters into force. After the Protocol has entered into force, EPA would revise the effective date section of regulations to include the date of entry into force.

The United States is now in the process of ratifying the Protocol. That process includes completion of an environmental impact statement concerning the Protocol, and submittal of the Protocol by the President to the Senate for its advice and consent. If the Senate gives its advice and consent, the ratification document then goes to the President for his signature and, once signed, is deposited at the United Nations headquarters. Unless unanticipated delays are encountered, EPA expects this process to be completed well before the January 1, 1989 target date for entry into force.

m. *Payment of Fees.*[8] (a) *Background.* In recognition of the fact that producers and importers of controlled substances would receive production and consumption rights which would allow them to engage in their activities, EPA has examined the feasibility and desirability of making the administration of this regulatory system as self-supporting as possible by having the producers and importers bear some of its costs through payment of administrative fees. EPA is proposing to include Sec. 82.14 in the proposed rule, which would provide for EPA to collect fees in advance for granting production and consumption rights. The authority for this provision is the Independent Offices Appropriation Act ("IOAA"), 31 U.S.C. 9701 (formerly 31 U.S.C. 483(a)), which permits and encourages Federal agencies to recover, to the fullest extent possible, costs attributable to special benefits provided to identifiable recipients.

[8] Payment of *administrative fees* to cover the costs of operating the program is being proposed regardless of the regulatory approach (e.g. allocated quotas, auctions, or regulatory fees) employed. Because the fee simply covers the costs of operating the program, the legal issues concerning a fee used as a regulatory tool are not applicable.

The following describes the broad outlines of the fee program.

(b) *Activities, the Cost of Which are Proposed for Recovery.* The Supreme Court has stated that agency activities for which costs are properly chargeable to the recipient are those which "bestow[ ] a benefit on the applicant, not shared by other members of society." In *National Cable Television Ass'n* v. *U.S.*, 415 U.S. 336, 340–41 (1974). The Court of Appeals for the D.C. Circuit has further specified that the full costs of providing a service may be recovered when:

- The Agency has identified specific activities for which the fee is being assessed;
- The service produces a private benefit;
- The value of the benefit is reasonably related to the fee;
- The benefit accrues at least in part to an identifiable private beneficiary and not merely to an entire industry; and
- The service produces no independent public benefit. *Central & Southern Motor Freight Tariff Ass'n* v. *U.S.*, 777 F.2d 722, 730 (D.C. Cir. 1985).

Based on these criteria, EPA proposes to recover the full costs of the following activities, all of which relate to apportioning and administering production and consumption rights:

(1) Determining the amount of baseline production and baseline consumption rights apportioned to specific producers and importers.

(2) Processing applications, under Secs. 82.9 and 82.11 for additional production rights, and taking associated actions (e.g. notifying the Secretariat of the Protocol of 25-kilotonne party transfers).

(3) Processing applications under Sec. 82.10 for additional consumption rights.

(4) Processing applications under Sec. 82.12 for transfers of rights.

(5) Processing and maintaining the reports required to be submitted to EPA under Sec. 82.13.

EPA requests comments on whether to charge for additional activities, such as audit and enforcement activities.

(c) *Determination of Costs of Activities.* EPA proposes to recover the following costs of the activities described above:

(1) Direct labor costs, which will be based on the grade level of staff working directly on the activities;

(2) Indirect labor costs, which will include managerial and supervisory support, and secretarial/clerical support; and;

(3) Overhead costs, including office space costs, utilities, equipment, and materials.

By the first day of any control period, every person owning production or consumption rights applicable to that control period would have to pay EPA the full amount of the fee owed. Failure to pay the fee on a timely basis would result in the person being treated as owning no production or consumption rights during the control period, until payment is made. Late payment would be subject to interest computed at the Federal short-term rate.

Under EPA's proposed system, owners of production or consumption rights would make one fee payment as of the beginning of the control period. No additional fees would arise from applications to EPA under Secs. 82.9–82.12 for additional production or consumption rights or transfers of rights. EPA solicits comments on the merits of charging separately for EPA's costs in processing such applications and reducing the up-front fees accordingly. In addition, EPA solicits comments on procedures for imposing fees with respect to audit or enforcement activities, if EPA determines to impose such fees.

(d) *Fee Waivers or Adjustments.* There may be circumstances under which waivers from, or adjustments of, fees would be appropriate. While the IOAA is silent concerning such matters, it does provide that the President shall set policies concerning the implementation of the IOAA. Office of Management and Budget (OMB) Circular A–25, Sec. 9(b) contains guidelines for Federal user charge systems and provides for exceptions to a general user fee policy under several circumstances. Under these guidelines, waivers may be appropriate under the following circumstances:

(1) *Public Interest.* If the person uses the controlled substances as part of activities designed to promote the public interest, the fee may be waived. EPA solicits comments on the circumstances under which this exemption may be applicable.

(2) *Economic Hardship.* A fee may be waived or adjusted if its imposition would result in an economic hardship on the person. Considerations for an economic hardship waiver include size of the firm and amount of sales or use of controlled substances.

(3) *Small Business.* EPA solicits comment on whether waivers of adjustments would be appropriate for small businesses, based on number of employees and annual gross revenue from sale or use of the controlled substance.

EPA further solicits comments on whether a fee should be charged for processing an application for a waiver or adjustment (which would be refunded if the waiver or adjustment is granted).

3. Other Regulatory Options Considered

As a regulatory scheme, allocated quotas of production and consumption rights appear to offer the advantages of the other options while avoiding many of their potential problems. However, as discussed above, it is not free from concerns.

By restricting the supply of CFCs and halons through regulation, EPA would effectively create a scarcity that would result in higher prices for the controlled substances as demand for CFCs and halons exceeded supply over time. Under the allocated quota approach, any additional revenue that would result from the scarcity created by this regulation accrue to the firms allocated rights.

The magnitude of these transfer revenues would depend on how much the prices for the regulated chemicals increased over time. Based on the analysis presented in the RIA, Table 5 presents EPA's estimates of possible transfer revenues that would accrue primarily to the chemical manufacturers, assuming that they allowed market forces to determine what price and which firms purchase CFCs and halons. (If market forces do not operate, the producers and importers will determine allocation to users based on criteria other than prices.) Table 5 shows that, even for scenarios where price increases are small in the initial years and gradually increase to the price where expected chemical substitutes come into play, the total amount of transfers could range from $2.0 billion to $5.7 billion from 1989 through 2000. For the scenario where CFC price increases in the early years are more substantial (e.g., the "stretchout cases" where implementation of low cost reductions is delayed), the amount of the transfers increases accordingly. Overall, for the decade leading up to the turn of the century, transfer revenues were calculated to be approximately three times greater than the social costs (i.e., the real resource costs to reduce use) involved in meeting the control requirement.

TABLE 5.—PRELIMINARY ESTIMATE OF POTENTIAL SOCIAL COSTS AND TRANSFERS TO PRODUCERS

	Least cost	Stretchouts		
		Moderate	Moderate/major	Major
CFC price increases (1985 $/kg):				
1989	0.0	0.0	0.0	0.0

TABLE 5.—PRELIMINARY ESTIMATE OF POTENTIAL SOCIAL COSTS AND TRANSFERS TO PRODUCERS—Continued

	Least cost	Stretchouts		
		Moderate	Moderate/major	Major
1994	2.21	3.50	3.70	5.48
1999	3.77	5.48	5.48	5.48
2005	3.77	5.48	5.48	5.48
2075	5.48	5.48	5.48	5.48
Social costs (present value in millions of 1985 dollars):				
1989-2000	689	1,146	1,628	1,850
1989-2075	27,040	29,220	37,910	38,140
Transfer revenues (present value in millions of 1985 dollars):				
1989-2000	1,975	2,516	2,757	5,703
1989-2075	6,163	7,096	6,376	9,400

Assumes CFCs regulated with an initial freeze in 1989 at 1986 levels, 20 percent reduction in 1993 and 50 percent reduction in 1998, and halons frozen at 1986 levels in 1992.

Social costs are discounted at a 2 percent rate, and transfer costs are discounted at a rate of 6 percent, reflecting the opportunity cost of funds in the private sector.

Source: Estimates taken from RIA.

An argument can be made that the above analysis overstates the quantity of transfers. According to this line of reasoning, chemical manufacturers may not behave competitively and would not allow market prices to determine who gets these chemicals, but would instead directly allocate them to their customers based on past sales. CFC and halon prices would increase only gradually reflecting the higher costs of producing less of these chemicals and the need to generate capital for research and production of chemical substitutes. The resulting lower price increases could act as a disincentive to the introduction of more expensive, substitute chemicals.

While no estimate of the price increases under this scenario has been calculated, given the slow rate of price increase in the EPA scenarios, the overall difference in the quantity of transfers is not likely to differ substantially. Thus, even in the scenario where CFC and halon producers allocate their allowable production and limit price increases, transfers on the order of a nearly a billion dollars or more are likely over the next ten years. This raises questions as to whether possible profits from continued production of the restricted chemicals might have the undesired effect of delaying the introduction of less profitable chemical substitutes.

EPA has explored a number of possible approaches to improving the equity of its proposed regulation by reducing or eliminating the potential transfers to the CFC and halon producers and importers. One approach, the use of auctions to allocate marketable rights, was mentioned in an earlier section. Under this option, EPA would auction rights to all interested parties and the resulting transfers would accrue to the U.S. Treasury.

An advantage of the auction approach is that it takes CFC allocation out of the hands of producing firms and allows the market to function. While detailed design of an auction is not presented, as an aid to commenters, the major characteristics of auction forms most likely to be applicable to the case of CFCs can be briefly presented. An advantage in the design of an auction of CFC permits is the availability of existing models provided by the auctions regularly conducted by the Federal Government in the areas of government procurement, leasing of mineral rights (including onshore and outer continental oil and gas development, coal leases, geothermal development, etc.), and Treasury bills.

The government auctions are typically structured as "first-price sealed-bid" auctions,[9] in which potential bidders submit sealed bids and the highest bidder is awarded the item for the price he bid. An alternative is the "second-price sealed-bid" auction, in which the highest bidder wins the item but pays a price equal not to his own bid but to the second-highest bid. Variations on these forms can be used: for example, the government may impose a reserve price, discarding all bids if they are too low; and bidders may be charged an entry fee for the right to participate.

When a fixed quantity of a good is put up for sale (such as with the weekly Treasury bill auction), two kinds of sealed bid auctions are used to sell multiple units, as explained below. In the discriminatory sealed bid auction, each of the bidders pays the amount he bid. In the uniform-price sealed bid auction, each successful bidder pays a price equal to the highest unsuccessful bid. Procedurally, bidders submit bids that consist of both a price and a desired number of units of the commodity. Enough units are available that a number of the highest bidders can be awarded the units for which they bid. The government then ranks all buyers' bids by price from highest to lowest, and cumulates the quantities bid.[10] The result is a market demand curve.

To aid in reducing uncertainty, the introduction of an auction as an allocation mechanism could be phased in according to a preannounced schedule (such as every three months); each auction would offer only a fraction of total rights for sale. The phase-in approach would allow time for procedural and substantive familiarity to be gained by all parties; if necessary, limitations could be placed on the amount of rights any one firm could acquire. With a very short timeframe between auctions, a firm concerned about the bidding up of prices could hold back, bid only its true value for rights in a subsequent auction, and have less concern over rights acquisition. To the extent it is desirable to protect small firms or particularly vulnerable industries, set asides could be designated for these groups.

In EPA's consideration of the use of an auction to allocate rights, several concerns have arisen. EPA is concerned about the potential large uncertainties regarding the price and availability of the controlled substances which an auction might create, particularly in its initial years. Related concerns are that big companies could easily outbid small companies, that speculators would drive up the price of rights, and that companies would hoard supplies.[11] As suggested above, a number of steps in designing an auction could be taken to address these concerns.

The final concern involves the question of EPA's legal authority under the Clean Air Act to operate an auction. Such an auction would constitute regulatory action by an administrative agency, pursuant to an asserted grant of authority from Congress, requiring the payment of money by the private sector to the U.S. Treasury. The principal legal issues EPA is considering concern (i) whether such an asserted grant of congressional authority constitutes a delegation by Congress of its constitutional power to impose taxes or, alternatively, its constitutional power to regulate commerce; and whether Congress in fact granted such authority for an auction under the statutes EPA administers.

One potential alternative—a "zero revenue auction"—might avoid some of the legal and practical problems. This alternative would not yield revenue to the government.

Under this approach, each producer (or user) would receive a provisional

[9] Sealed-bids are preferred due to risk aversion on the part of bidders.

[10] The cumulation process may require several steps (not detailed here).

[11] To some extent uncertainty stems from the shortages themselves and sufficient information regarding the auction form would alleviate concerns over the method of allocation.

allocation of rights equal to its 1986 production (or use). Each producer or user would then be required to submit a sealed bid presenting the number of rights it would purchase at a range of alternative prices (i.e. its demand schedule). These bids would be aggregated to construct the market demand for these rights. The resulting market price would then be set at the price that equates market demand with the 1986 ceiling on total production.

Each firm's final allocation will be its reported demand at the market price. Each firm would then pay an amount equal to the price of these rights times its final allocation and receive back an amount equal to the price times its provisional allocation. Net payments to the government would be zero for all firms taken together. Each firm would receive exactly the number of rights it initially stated it would be willing and able to purchase at the equilibrium price.

The zero revenue auction has several features that make it an attractive interim option. First, it virtually eliminates uncertainty by guaranteeing each firm the number of rights it initially reported in its ceiled bids at each alternative price.[12] Second, it automatically produces the first round of trades in the system of marketable permits, thus reducing any one firm's ability to hoard, speculate, or to outbid others. Third, it produces a public price signal providing information for future (non-zero revenue) auctions and other allocation systems that the government may want to implement as well as for potential entrants into the industry. Finally, if the auction is conducted for users (as opposed to producers), it would address the concerns that some users may be forced out of business. Each user could guarantee that it stays in business or be compensated for going out of business at a price to which it agreed.

If it is determined that EPA lacks the authority to conduct an auction, legislative authorization would be necessary. These legal issues are addressed in greater detail in an analysis prepared by EPA which is included in the docket.

EPA is specifically interested in receiving comments on the desirability of using auctions as the method of allocating rights, the possible steps EPA could take to minimize disruption in the early years of an auction, and the legal issues concerning the possible need for additional legislative authority.

If the legal obstacles to auctioning marketable permits cannot be resolved, a potentially attractive alternative would involve EPA allocating CFC or halon rights to firms now using (as opposed to producing, importing, or exporting) these chemicals. This option is very similar to the scenario described above whereby the chemical producers would reallocate their allowable quotas to their customers based on historic sales. The major difference is that in the option where EPA allocates rights directly to users, the possibility of transfers from users to producers is substantially reduced. However, under this option EPA would be required to allocate rights to approximately 10,000 firms who now buy directly from CFC and halon producers. EPA is interested in receiving comments on the desirability of this approach and possible ways to minimize the administrative burden of the intitial allocation.

Another attractive option which provides a strong alternative to the auction option would be to combine allocated quotas with a regulatory fee. While a fee alone would not ensure compliance with the reductions required by the Montreal Protocol, when teamed with allocated quotas, this flaw would be remedied. The quota would provide a relatively straightforward means of ensuring that the reductions required by the Montreal Protocol are achieved. A fee assessed against producers and importers would provide an economic incentive for the introduction of chemical substitutes and for firms to employ other low cost methods of reducing emissions. It would also provide clear signals about future price increases and avoid many of the potential uncertainties associated with auctions. The fee would also capture most of the transfers for the U.S. Treasury, thus serving equity.

The fee would be set to capture all or most of the CFC and halon price increases which result from the scarcity created by EPA's regulations. The marginal cost of the CFC control alternatives (including substitutes) would provide the primary basis for setting the level of such fees. As with tradable rights, fees would be scaled on the basis of ozone-depleting potential, e.g. dollars per kilogram-equivalent of ozone-depleting substance produced.

An important design consideration is the extent to which periodic fee adjustments would occur on an automatic basis or would require regulatory intervention. With the quota system in place, automatic fee changes specifically intended to bring actual CFC production into alignment with production goals would not be necessary. However, any adjustments needed as a result of significant changes in economic activity, new scientific evidence, and/or discovery that the cost of switching to certain substitutes was different than previously thought would likely be difficult to accomplish on an automatic basis. On the other hand, the more automatic the adjustment, the more certainty for investment and production decisions the system is likely to provide.

Another important design consideration is the extent to which the fee should be phased in: should it be set from the start at levels calculated to extract the full amount of transfer payments or should it be set low (merely as a price signal) and subsequently adjusted upward in (either small or large) increments?

Collection of fee payments would be directly from the firms allocated the CFC and halon quotas, on a periodic (e.g. monthly or annual) basis.

EPA seeks comments on the fees-with-quotas option, in comparison with both the auction option and the allocated quota option without fees. EPA is interested in receiving comments on the desirability and implementation issues related to this option, including the legal issues raised earlier.

Under a final approach to reducing the potential inequities of the allocated quota system, some portion of the transfers could be recaptured through voluntary donations by the producers to an industry-wide research organization. This approach would not be mandated by EPA, but would be pursued by a voluntary organization created by CFC and halon producer and user industries. Essentially, some or all of the producer firms would agree to set aside some portion of the price increase from CFCs and halons to support research activities. Funds set aside for this organization could be used to support projects to aid producers and users in their transition away from the use of these regulated chemicals. Examples of possible projects could include: joint toxicity testing for new chemicals; studies to support fire and building code changes; testing of the compatibility of new chemicals with existing equipment; education and training to encourage increased recycling by professionals involved with servicing equipment using CFCs and halons; support for tests required to obtain regulatory approvals needed for product substitutes, etc. All

[12] In fact, any firm could go so far as to guarantee its provisional allocation as its final one by reporting that it would purchase its provisional allocation regardless of the price. If all firms did this, the provisional allocation would be the final one and change hands.

proposed projects would be submitted on a voluntary basis and reviewed by a committee representing the members of the institute.

Joint research groups have been established by other industries (e.g., the Electric Power Research Institute) and are generally highly regarded by their members. Several CFC user groups have already initiated and funded joint efforts to resolve obstacles to testing and using CFC substitutes. The major halon producers and users have agreed in principal to pursue this option with the chemical producers assessing a few cent per kilogram tariff on all halon sales to fund joint projects to reduce emissions, to develop new fire protection chemicals and practices. EPA is interested in comments on the possible structure and scope of this type of organization, how it might aid in facilitating technology transfer and the extent to which it might add to research and development efforts undertaken anyway by individual firms.

The second major concern with allocated quotas relates to the possibility that some industries—particularly those where CFCs or halons are only a small fraction of total product cost—may be slow to respond to economic incentives to reduce their use of the controlled substances and may elect to simply pay higher prices for CFCs/halons instead. The rate at which firms will move to make cost effective reductions rests on a behavioral assumption about the extent to which firms will minimize production costs. To gain some insights into the effect of alternative assumptions on cost-minimizing behavior, EPA included in the RIA several scenarios where the analysis assumed that firms elected to delay or failed entirely to pursue certain cost-effective, low-cost reduction options.

Table 5 shows the differences in CFC prices for various assumptions about the rate at which firms employ low-cost use reductions. Compared to the "least cost" case where reductions are taken as they become cost competitive and technologically available, the three "stretchout" cases demonstrate that should firms not seek to minimize costs, CFC prices, social costs and transfers could all increase. Given the assumption on the availability of substitutes in the future, these increases occur primarily in the early years when the burden on user industries will be most difficult and before chemical substitutes for many applications will be commercially available.

This analysis shows the close interrelationships among CFC- and halon-using industries under the proposed regulatory approach. To the extent those industries where inexpensive reductions are available postpone making such reductions, prices of CFCs and halons would likely increase to all industries. For those user groups where CFCs are a large percentage of final product price (e.g., the foamblowing applications), such increases could be burdensome particularly in the initial years before chemical substitutes come to market and place a ceiling on such cost increases. Table 6 shows EPA estimates of the total amount of CFCs and halons consumed by the major user industries.

TABLE 6.— 1985 U.S. CONSUMPTION OF CFCS AND HALONS BY MAJOR USER INDUSTRIES

Industry	Total weighted use (mill kg)	Chemicals used
Flexible Foam	18.6	CFC–11
Rigid polyurethane foam.	61.3	CFC–11, 12
Rigid non-urethane foam.	12.8	CFC–12, 114
Refrigeration and air conditioning.	96.0	CFC.11, 12, 114, 115
Aerosol	11.6	CFC–11, 12
Solvent	54.8	CFC–113
Fire extinguisher	43.4 [1]	Halon–1211, 1301, 2402
Miscellaneous	22.0	CFC–12

[1] Estimates do not include Halon 2402.
Source: Estimates prepared for EPA Regulatory Impact Analysis.

Of course, direct limits on specific CFC or halon uses—either bans or engineering controls—also have serious drawbacks. They would reduce or effectively eliminate the markets' ability to allocate CFCs and halons to their highest valued uses and result in a waste of resources. This happens because they reduce individual's and firm's rewards from finding those uses as well as their incentives to find substitutes that do not deplete ozone.

Requirements of this type are also generally inflexible and unresponsive to changes in the relative values of CFCs and halons in other uses. An approach relying on bans and engineering controls places in the hands of the Federal government basic decisions on the use of these chemicals. There is no guarantee that the mandated restrictions will result in better or more valuable uses of these chemicals.

Since the initial limits are at 1986 levels, any shortfall in supply (and associated increases in prices) are not likely to be large in the early years. Further, it could take several years to promulgate regulations restricting specified uses. Thus, such regulations may not be helpful in easing the transition.

However, because of the potential concerns that some users may not minimize their costs, EPA is seeking comment on the desirability of supplementing the allocated quota system with direct limits on specific CFC or halon user industries where inexpensive reductions appear feasible. These limits could be established by EPA on a voluntary (e.g., the publication of technical guidance) or mandatory basis, or they could start as voluntary and become mandatory, through a rulemaking procedure, only if necessary. They could be developed through the traditional agency process or through a different process (e.g., a negotiated process) with greater involvement of industry and other interested groups.

In developing the RIA cost analysis, EPA obtained substantial information from a variety of sources on low-cost measures to reduce CFC and use. Based on its preliminary cost analysis, the following steps to reduce CFC and halon use appear possible during the period covered by this regulation:

a. *Commercial Air Conditioning.* Firms in this industry have taken steps in recent years to shift away from CFC–12 in air conditioning. For example, window and central units are no longer of concern from the perspective of this proposal because they now use HCFC–22. Commercial chillers have already begun to shift, but could make greater use of HCFC–22, CFC–502, CFC–500 and other chemicals and mixes with ozone depletion weights that are significantly lower than CFC–11 and CFC–12. Although CFC–502 is a blend of 48.8 percent HCFC–22 and 51.2 percent CFC–115, it has a combined ozone depletion weight of approximately 0.3, and therefore represents a potentially attractive option for many firms. By altering their market mix and shifting more toward CFC–22, CFC–502, etc., substantial reductions in CFC–11 and CFC–12 use are currently possible.

Nonetheless, there appear to be substantial emissions resulting from current practices of venting CFCs during routine maintenance. Relatively minor design changes (e.g., different valves) by equipment manufacturers could facilitate improved servicing practices and reduced emissions.

Over the longer-term, chemical substitutes may make it possible to eliminate use of CFC–11 and CFC–12 in new equipment. The most promising chemical substitute now appears to be

HFC–134a. This chemical does not contain any chlorine and therefore would not: deplete ozone. It has passed preliminary short-term toxicity tests, but has not yet undergone longer-term testing and is not yet available in commercial quantitites. Recent industry estimates suggest this chemical could be available in 5 years to 6 years if no major problems are encountered. It has many of the same chemical and physical properties of CFC–12 and initial tests suggest that it might require only minor changes to be used in new equipment. It is likely, however, to cost several times the current price of CFC–12.

b. *Automobile Air Conditioning.* Approximately 25 percent of all CFCs are used in automobile air conditioners making it by far the single largest user industry. In the near term, the auto manufacturers could improve component quality and several could redesign their air conditioning units to require a lower initial CFC charge per unit. While substantial progress has been made in reducing emissions in manufacturing over the past years, EPA's analysis suggests that a wide variance exists among automobile manufacturers and that additional steps could be taken in this area. Other CFC reductions which appear possible in the near term at the point of manufacture include completing the switchover to helium gas for testing systems and eliminating unnecessary losses during charging.

Over the longer term, automobile manufacturers appear to have several promising options for eliminating this use of CFC–12, including the use of chemical substitutes (e.g., HCFC–22, CFC–142b/22 blend, and HFC–134a). In addition, alternate air conditioning systems including a modified sterling cycle may be feasible. Because of the difficulty in knowing which of these or other options will prove to be most attractive, research into several of these options simultaneously may be desirable.

Even if automobile manufacturers are capable of shifting away from CFC–12 based air conditioners over the next seven years or longer, substantial quantitites of CFC–12 will still be required to service the existing fleet. Although a large number of facilities service car air conditioners (leaving aside for the moment the portion of the market serviced by car owners directly), several promising options deserve attention because of the large quantity of CFCs used by this market segment.

One option involves the sale of small containers used by car owners and some service centers to recharge vehicles. These containers eliminate the possibility of recovery at a service station, resulting in substantial quantitites of CFCs lost through venting, and losses due to refrigerant trapped in the container following use.

A second option involves the possibility of blending a non-CFC chemical with CFC–12 to reduce the latter's use in servicing the aftermarket. Initial research has shown promising preliminary results that such a compound could be used in existing equipment without costly modifications and would be more energy efficient and less expensive.

c. *Electronics and metal cleaning.* Perhaps the fastest growing use of CFCs is the use of CFC–113 as a solvent by the electronics industry. Because CFC–113 is nontoxic and compatible with a variety of materials, its use has increased substantially during the past several years, particularly as health concerns have been raised concerning other chlorinated solvents currently being used.

Because of the high cost of CFC–113 and the fact that it is used as a solvent and therefore is not consumed in the manufacturing process, recovery and reclamation of substantial quantities of CFC–113 already occurs. However, based on EPA's preliminary analysis, additional opportunities exist for improved recycling. For example, existing equipment frequently does not have automatic covers or hoists (in the case of open top vapor degreasors), both of which could reduce losses. In addition, operating practices could be improved to further reduce CFC losses.

Increased recovery of CFC–113 may be particularly important because of the drawbacks of switching from CFC–113 to other chlorinated solvents. EPA's Office of Toxic Substances, as part of its Chlorinated Solvents Task Force, is working along with other EPA offices and other agencies such as the Occupational Health and Safety Administration and Consumer Product Safety Commission, to review the use of methylene chloride, perchloroethylene, trichloroethylene, and methyl chloroform in solvent and other applications. Before switching to any of these alternatives, firms should consult with EPA and state agencies to determine current requirements and the potential for future regulations. In the case of metal cleaning applications, alternatives to these chlorinated solvents which might be appropriate for many current applications including aqueous cleaning as well as other non-chlorinated solvents.

The electronics industry consumes CFC–113 to remove solder flux from printed circuit boards, to degrease semiconductors, to manufacture etchant gases, to degrease printed circuit boards in storage media manufacture, and in other ways. Viable alternatives exist for each of these uses. Beginning in the short term and expanding over the longer term, the use of aqueous cleaning and flux that does not require cleaning appears most promising. EPA convened a panel of experts in this field and they reported that it is technically possible to eliminate up to 90 percent of current CFC–113 use in non-surface mount applications by substituting aqueous cleaning. The remaining 10 percent depends on non-aqueous cleaners because of design choices that can be changed over time. An important step in facilitating the use of aqueous and non-clean fluxes may involve working with the U.S. military to review its current solvent and solder specifications to facilitate the use of these alternatives where appropriate.

d. *Flexible Foam.* This industry group includes makers of polyurethane foam slabstock used primarily for bedding and mattresses. CFC–11 is used as an auxiliary blowing agent in that segment of the industry which produces less expensive, low density or supersoft foams. Many producers now use methylene chloride to make similar foam products. However, because of toxicity concerns and the possibility of more stringent regulations both inside and outside the workplace, it is unlikely that many firms will elect to switch to this alternative blowing agent.

No alternative technologies or chemical substitutes currently appear as the likely replacements for use of CFC–11 in blowing flexible foam. Instead, in the near-term it is possible that the very softest, lowest density foams will be replaced by firmer foams blown without an auxiliary agent. Over the longer-term, depending on its price, HCFC–123 may become a viable replacement for CFC–11 blown foam. This chemical appears to be a possible replacement for CFC–11 in many foam applications. It has similar industrial properties and initial tests suggest that it might be an effective substitute blowing agent. HCFC–123 has a substantially shorter lifetime than CFC–11 and therefore has not been included under the chemicals covered by this proposal. However, additional toxicity tests will be required before widespread use is possible and the costs of this substitiute are likely to be approximately 2 times to 3 times the current price of CFC–11. Like HFC–134a, this chemical should be commercially available in 5 years to 6 years assuming no major problems are encountered.

In addition to slabstock foam, flexible molded foam blown with CFC–11 is used primarily in seat and back cushions by auto manufacturers and also in some furniture uses. Several companies have stated that they currently do not use CFC–11 as an auxiliary blowing agent; they have shifted to water blown foam. Other companies have noted that within three months they will also shift out of CFC use and into water blown foams.

e. *Commercial and Residential Refrigeration.* As was the case with air conditioning, over the last few years, commercial refrigeration has moved in the direction of shifting some uses from CFC–12 to HCFC–22, CFC–502, CFC–502 and other refrigerants. This trend is likely to continue in the area of commercial refrigeration. Manufacturers can also further reduce emissions from leak testing and rework. Increased recovery at reworking, venting and disposal will also reduce the use of CFCs. Over the longer term, HFC–134a appears promising as a means of eliminating this use of CFC–12.

For home refrigerators, the same substitute may prove feasible. In addition, home appliances might be produced using a modified sterling cycle or other technology that does not use CFC as its refrigerant. CFC–500, which has as ozone-depleting potential of 0.7, can be used in some appliances such as dehumidifiers.

f. *Rigid Insulating Foam.* CFC–11 is widely used as a foam blowing agent to make various forms of insulating foam (e.g., polyurethane, isocyanurate, phenolic, etc.). Its molecular weight and low thermal conductivity make CFC–11 an excellent chemical in the manufacture of highly efficient insulating materials used for roofs, walls, and foundations.

In the near-term, this use of CFCs may not be significantly reduced because of its utility in saving energy (and meeting code requirements) and because no substitute blowing agents are available. However, some product substitutes may make inroads into its current market. Over the longer-term, HCFC–123 may become an attractive means of reducing this use of CFC–11.

g. *Rigid Packaging Foam.* CFC–12 is used as a blowing agent in the manufacture of polystyrene foam which is widely used in the food packaging industry. CFC–12 currently competes with pentane as a blowing agent for producing this foam with each capturing about 50 percent of the market.

Because of pentane's potential problems with flammability and air pollution, many firms now using CFC–12 will not want to incur the substantial costs of shifting to this chemical. Instead, recent process development efforts have demonstrated that HCFC–22 can effectively be used as an alternate blowing agent. Industry estimates suggest that only minimal costs would be incurred in converting a plant from CFC–12 to HCFC–22 (on the order of $50,000 to $100,000) and that operating costs and efficiencies will not be significantly affected. An application was recently approved by the Food and Drug Administration granting non-objection (e.g., a ruling that the proposed product for a particular use does not differ materially from an already approved product) to the use of HCFC–22 blown foam in fast food packaging.

h. *Total Flooding Fire Extinguishant Systems.* Halon 1301 is used almost exclusively as the agent in total flooding systems used to protect computer centers, document rooms, libraries, military installations, etc. Because it is nontoxic (which allows it to be discharged without evacuating the facility) and because it does not leave a residue, its provides an extremely useful function in protecting high value property.

In response to recent concerns about the role of halons as a potential ozone-depleting substance, the industry has initiated a series of steps to better understand and reduce any unnecessary emissions of this gas. For example, the industry decided not to require mandatory discharge testing of new systems as part of a review of its fire protection code. It is exploring the development of alternative test gases and ways to limit discharges from false alarms. It also conducted an industry-wide survey to determine current uses and sources of emissions and is exploring ways to track halons from the time of production to their release as basis for possibly shifting to an emissions (instead of production) based regulatory regime.

In the near term, the voluntary emission reduction steps described above might provide ample room for continued growth in the number of systems assuming substantial reductions from unncessary testing and false alarms can be realized. Over the longer term, alternate chemicals may be developed, more efficient use of these chemicals may be possible (e.g., shifting from 1301 total flooding systems to more directed, less depleting 1211 systems), or the industry may be capable of demonstrating that an emissions based regulatory system is a viable means of protecting the environment while continuing the use of these chemicals.

i. *Halon Fire Extinguishers.* Halon 1211 is used extensively in wheeled and handheld portable fire extinguishers. These extinguishers are used in situations where human exposure to the agent is possible (e.g., airplanes) or where concerns exist about harm from residues from other agents (e. g., computers). At the same time, these extinguishers have recently penetrated the broader consumer market and some percentage are now being purchased and used for applications where other agents would be adequate.

In addition, the major user of Halon 1211 is the military as part of its training exercises. The U.S. military has already initiated a review of possible steps to reduce unneccesary steps from training and is also working on developing alternative fire-fighting agents.

j. *Sterilization.* CFC–12 in combination with ethylene oxide (EO) (in a 12/88 blend) is widely used by hospitals, medical equipment manufacturers and contractors for sterilizing equipment. While 30 percent of the commercial market and majority of hospitals now use this CFC/EO blend, other options are currently feasible.

Hospitals could shift to a blend of carbon dioxide and ethylene oxide and totally eliminate their use of CFC–12. While this shift requires that a chamber be able to withstand higher pressure and may involve a longer processing time, neither of these concerns are expected to create problems for most hospitals.

Because of their higher volume use, commercial sterilizers could economically increase their recapture and recovery of CFC–12 through the addition of carbon adsorption or refrigerated condensors. In turn, hospitals could elect to increase their reliance on contract sterilizers as an alternative to shifting to carbon dioxide/ethylene oxide mix.

Sterilization using cobalt radiation has recently achieved a growing share of the market and offers another attractive alternative to current use of CFC–12 in this application. Other methods of sterilization such as electron beam and alternative chemicals are also possible over a longer time period.

Finally, EPA is also seeking comment on the desirability of requiring that products produced with the controlled substances be labelled. This requirement would provide useful information for consumers. By making it possible for consumers to distinguish between those spraycans that contained CFCs and those that did not, it was an effective part of the regulatory program limiting this use of CFCs in 1978. Labelling requirements could be used as

an adjunct to any of the other regulatory options described above.

VII. Impact of Proposed Action

A. Reductions in Ozone Depletion

The proposed regulation would substantially reduce the threat of stratospheric ozone depletion and the accompanying risks to human health and the environment. As shown earlier in Table 4, in the absence of any regulation, a continuation of current trends in the use of ozone-depleting chemicals could result in a global average of 12 percent depletion by 2050 and as much as 40 percent depletion by 2075.

By reducing consumption of the most potent ozone-depleting CFCs in approximately a decade by 50 percent from 1986 levels and by freezing consumption of halons 1211, 1301, and 2402, the projected depletion of ozone would be substantially eliminated. Based on current models, these limitations (assuming a significant portion of other nations take similar steps) would result in depletion estimates of 1.6 percent by 2050 and under 1.4 percent by 2075.

Given the large uncertainties concerning current atmospheric models, the rates of growth of other trace gases, and reduction steps by other nations, EPA's proposed action represents a reasonable near-term strategy for safeguarding the ozone layer. However, as we develop a better understanding of these factors, EPA intends to periodically reassess its actions. The Agency also intends to participate in similar reassessments conducted under the auspices of the Montreal Protocol.

B. Economic Impact

In its regulatory impact analysis, EPA has examined the potential costs (in terms of U.S. industry) and health and environmental benefits also limited to the U.S. which are likely to result from the proposed action. The analysis assumes that a large portion of other developed and developing nations join with the United States in reducing their consumption and production of the controlled substances.

Given the nature of this issue, the RIA necessarily covers a broad range of areas. On the costs side, this analysis covers eight major industrial groupings: refrigeration; air conditioning; flexible foam; rigid foam; solvent cleaning; sterilization; miscellaneous; and fire extinguishant. The RIA contains information on over 650 different control options for limiting use of CFCs and halons within these industrial groupings.

The potential benefits from limiting the amount of future depletion also cover a broad range of health and environmental concerns. An increase in the quantity of damaging ultraviolet radiation flux would represent a major change in one of the basic environmental parameters potentially affecting to varying degrees most forms of biological life. While research to date on the effects of increased exposure to UV-B radiation has been limited, the RIA explores several specific potential areas of damage, only some of which can be quantified with currently available information.

1. Economic Costs of Reductions

EPA used a bottom-up approach in analyzing the costs of meeting the proposed regulation. As described above, studies were initiated in eight major CFC and halon use categories. These groupings were then further divided into 82 specific applications. For example, refrigeration was divided into 18 categories including retail food, home refrigerators, refrigerated transport, etc. Finally costs and emission reduction estimates were developed for over 650 distinct control options covering the full range of use applications. These options included engineering controls, chemical substitutes, product substitutes, recovery and recycling, and work practices. Cost estimates included capital and operating expenses (including, where applicable, any energy penalty). Technologies were assessed in terms of the date at which they would be available (0–3 years, 4–7 years, or longer), and the rate and limits for achieving market penetration.

The cost estimates for these reductions were used as the input for the Integrated Assessment Model (IAM) which provided estimates of the total cost of meeting a regulatory goal. The model operates by prioritizing the potential reductions on the basis of least cost and the judgment of EPA's contractors based on discussion with industry representatives concerning the likely response to regulations on the part of specific industry sectors.

The output from the model provides an estimate of the total social costs for meeting a required level of reductions, the CFC or halon price increases which would likely accompany such costs, and the amount of transfers which would be involved. Table 5 contains these estimates for proposed regulation under four different assumptions concerning the rate at which firms respond to changes in market conditions resulting from restrictions on the regulated chemicals.

The "least cost" scenario assumes that all reductions are taken as soon as they are technologically available and as soon as the cost of CFCs or halons exceed the cost of making the reduction. In this scenario, CFC price increases are minimal in the early years, rise to $3.77/kg around the turn of the century and plateau around $5.48/kg well before 2075 when chemical substitutes have penetrated major markets.

The low initial cost increases reflect the large quantity of CFC and halon reductions that are available with current technologies and which either will save firms money (e.g., through additional CFC or halon recovery) or which are competitive. In the latter years of the analysis, the $5.48 price ceiling reflects the anticipated costs of alternative chemicals (e.g., primarily HFC–134a replacing CFC–12 and HCFC–123 replacing CFC–11 in foam applications) which could replace large quantites of current CFC use. In the least cost scenario, total social costs were calculated to be $689 million through 2000 and $27 billion through 2075 (all social costs assume a 2 percent discount rate).

In contrast to the "least cost" case, the other scenarios assume varying degrees of delay in implementation of steps to reduce CFC and halon use. Firms might delay their response for any of several reasons: They lack information about the availability or applicability of a technology; they are less concerned about minimizing costs in the short-run because they can pass on price increases to consumers; they may lack access to capital to make a shift to a lower cost technology; or they may assume a high "hurdle rate" (i.e., the desired return on capital for any new investments) for capital committed to pollution control.

The costs of meeting the proposed regulation under these alternative scenarios is also shown in Table 5. The social costs calculated from the IAM through 2000 ranged from $1.1 billion to $1.8 billion depending on the rate at which firms implemented low cost reductions. The CFC price increase which would accompany these costs in all scenarios reached $5.48/kg just before the turn of the century. However, the range of transfer costs during this time period (1989–2000) was much wider, reflecting different price increase in the initial years. In the "moderate stretchout" case transfers through 2075 totaled $7.15 billion, while in the "major stretchout" case transfers totaled $9.4 billion.

Thus, the rate at which firms implement low cost reductions is an

important determinant, particularly in the near-term, of the costs and transfer payments involved in meeting the proposed regulations.

As part of analyzing the economic costs of reducing CFC and halon use, the RIA also takes into consideration possible impacts of the proposed regulation on energy use. CFCs are used in a wide range of energy-related areas including insulation for buildings and appliances. Its thermal efficiency also affects energy consumption of refrigerators and other appliances.

Based on the analysis in the RIA, no significant increases in energy consumption or costs are likely to occur. In the near-term, CFCs are still likely to be used in major appliances. In the case of insulation, building and energy codes generally require a set level of energy efficiency which will either continue to be satisfied by CFC-blown foam or by other insulating materials (e.g. fiberglass). In the longer-term, substitute blowing agents are likely to be developed and formulations modified to maintain current insulating values.

2. Health and Environmental Benefits

The RIA also contains a description of the potential benefits that would result from actions to limit the risks from ozone depletion. In some of the health and environmental areas, sufficient research has been completed to provide a basis for a dose response relationship which can be used for calculating potential benefits. Examples of these areas include nonmelanoma and melanoma skin cancer, and cataracts. In other areas, research on UV-B radiation effects primarily has taken the form of case studies. For example, research on plant effects has progressed the furthest on soy beans, while research on aquatic effects has examined potential impacts on anchovies. In these and similar areas (e.g., increased groundlevel ozone formation and sea level rise impacts), the RIA quantifies benefits based on an extrapolation from existing case studies. Finally, in several areas, initial studies have clearly shown that increased UV-B radiation will cause damage, but not enough information exists to quantify those impacts. Examples include suppression of the immune system and climate related impacts on water resources, agriculture, forests, etc. A detailed decription of the derivation of the benefits estimates are included in volumes 1 and 2 of the RIA.

Table 7 summarizes estimates of the economic benefits which would result from the proposed actions to prevent future depletion of the ozone layer. These benefits reflect the difference between the base case (no regulation) described in Section IV and the "CFC 50%, Halon Freeze" case which forms the basis for this proposed regulation.

It should be stated that projecting benefits out to the year 2075 is a very speculative exercise at best (but is required because of the long atmospheric lifetime of these chemicals). The estimates are subject to substantial uncertainties both in the calculation of the dose-response effects, and in the economic values placed on such effects. Due to this enormous uncertainty, the benefits have been estimated in ranges.

TABLE 7.—SUMMARY OF BENEFITS FROM PROPOSED REGULATION*

	Reference scenario
Effects:	
Skin cancer cases	154.43 million cases.
Skin cancer deaths	3.14 million cases.
Cataract cases	17.6 million cases.
*Valuation:***	
Value of skin cancer cases	$61.3 billion.
(low and high sensitivity)	($1.1 bill.-$205 bill.).
Value of skin cancer deaths.	$6.35 trillion.
(low and high sensitivity)	($17.4 bill.-$342 tril.).
Value of cataract cases	$2.57 billion.
(low and high sensitivity)	($72 mill.-$7.8 bill.).
Damage to crops	$23.4 billion.
(low and high sensitivity)	($2.3 bill.-$46 bill.).
Damage to fish	$5.5 billion.
(low and high sensitivity)	($3 bill.-$11.4 bill.).
Damage to crops from ground level ozone.	$12.4 billion.
(low and high sensitivity)	($1.1 bill.-$24.9 bill.).
Damage to polymers	$3.12 billion.
(low and high sensitivity)	($221 mill.-$6.3 bill.).
Sea level rise damage to major ports.	$4.3 billion.
Total monetary benefits:	$6.3 trillion.
(low and high sensitivity)	($29 bill. to $340 tril.).

* Shows value of avoided damage relative to "no regulation" For populations alive today and born before 2075.

** Ranges for damage valuation reflect the following scenarios: the high scenario assumes a 1 percent discount rate and a $4 million value of life which increases by 3.4 percent per year. The low scenario assumes a 6 percent discount rate and a $2 million value of life which increases by 0.85 percent per year. The medium scenario assumes a 2 percent discount rate and a $3 million value of life which increases by 1.7 percent per year.

Health effects (skin cancer incidence and mortality, and cataract incidence modeled based on dose-response estimates presented in EPA (1987). Crop estimates presented for grain crops based only on dose response developed for soy beans. Damage to fish estimated for commercial harvest of fin and shell fish based on dose response developed for anchovies. Polymer estimates based on dose response models developed for PVC and extended to include acrylics and polyesters. Damage to crops from ground level ozone based on case studies of 3 U.S. cities and a national crop loss model. Sea level rise estimates assume anticipatory action to lessen damages, but only includes storm damage to major ports based on limited case studies.

The total benefits through 2075 were estimated to be between $29 billion and $340 trillion (benefit estimates were discounted over a range of 1 percent to 6 percent annually). The majority of these benefits resulted from decreases in the number of deaths from skin cancer which is an area where effects research has progressed the furthest. The skin cancer benefit estimates, however, assume no improvement in our ability to treat skin cancer. If a cure for cancer were discovered, these benefits would decrease enormously. Because more limited research has been undertaken in the area of potential damage to crops and aquatic organisms, the estimates of potential benefits for these areas are also uncertain. In its report to EPA, the Science Advisory Board stated that it believed that damage related to these areas could prove to be of greater global magnitude than harm from skin cancers.

3. Comparison of Costs and Benefits

Based on the analysis presented above and detailed in the RIA, the estimated benefits from the proposed regulation would far exceed the estimated costs. Table 8 summarizes these benefits and costs. It shows that for those areas where quantification was possible, benefits would total from $29 billion to $340 trillion for the period 1989-2075. In comparison, costs of reducing CFCs and halons called for by the proposed regulation for the same period would total approximately $27 billion. Table 9 illustrates the extreme sensitivity of this analysis to specific individual assumptions about discount rates and the valuation of life. Additional sensitivities are included in the RIA.

TABLE 8.—COMPARISON OF COSTS AND BENEFITS THROUGH 2075 by Scenario

[Billions of 1985 dollars]

	Health and environmental benefits	Costs	Net benefits
No Controls:			
CFC Freeze	5,995	7	5,988
(low)	16	0.7	15
(high)	324,000	12	323,988
CFC 20%	6,132	12	6,120
(low)	17	2	15
(high)	330,000	21	229,979
CFC 50%	6,299	24	6,275
(low)	18	5	13
(high)	339,000	41	338,959
CFC 80%	6,400	31	6,369
(low)	19	7	12
(high)	341,000	51	340,949
CFC 50%/ Halon freeze	6,463	27	6,436
(low)	19	5	14
(high)	345,000	46	344,954
CFC 50%/ Halon freeze/U.S. 80%	6,506	34	6,472
(low)	19	7	12
(high)	346,000	56	345,944
U.S. only CFC 50%	2,852	27	2,825
(low)	8	5	3
(high)	135,000	46	134,954

All dollar values reflect the difference between the No Controls Scenario and

the specified alternative scenario. Valuation of the health and environmental benefits applies only to people born before 2075; costs are estimated through 2075.

Ranges for damage valuation reflect the following scenarios: the high scenario assumes a 1 percent discount rate and a $4 million value of life which increases by 3.4 percent per year. The low scenario assumes a 6 percent discount rate and a $2 million value of life which increases by 0.85 percent per year. The medium scenario assumes a 2 percent discount rate and a $3 million value of life which increases by 1.7 percent per year.

Source: EPA Regulatory Impact Analysis, 1987.

TABLE 9.—SUMMARY OF RESULTS OF SENSITIVITY ANALYSES FOR COSTS AND MAJOR HEALTH BENEFITS FOR PEOPLE BORN BEFORE 2075

Sensitivity	Ozone depletion by 2075 (percent)	Value of lives lost (10^9)	Control costs (10^9)	Net present value of benefits—costs (10^9)
1. Base case (assumes a two percent discount rate)				
No controls	39.9	6,499		
Protocol	1.3	150	27	
Difference	38.6	6,349	27	6,322
2. Discount rates				
A. 1 percent				
No controls	39.9	24,650		
Protocol	1.3	388	46	
Difference	38.6	24,262	46	24,216
B. 6 percent				
No controls	39.9	71		
Protocol	1.3	9	5	
Difference	38.6	62	5	57
3. Value of life				
A. $2 million				
No controls	39.9	4,333		
Protocol	1.3	100	27	
Difference	38.6	4,233	27	4,206
B. $4 million				
No controls	39.9	8,667		
Protocol	1.3	225	27	
Difference	38.6	8,442	27	8,415

Source: EPA Regulatory Impact Analysis, 1987.

VIII. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed regulation meets the definition of a major rule under E.O. 12291, and has prepared a regulatory impact analysis (RIA). That document, along with this notice of proposed rulemaking, has been submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Any comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, South Conference Room 4, Docket No. A-87-20, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the RIA has also been placed in the rulemaking docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA has prepared an initial regulatory flexibility analysis for the regulations proposed in this notice, and this initial RFA has been placed in the rulemaking docket.

The initial RFA concluded that of the many industries potentially affected by the proposed regulation, the foam blowers were the only group that could be substantially affected based on the criteria contained in EPA guidelines on preparation of an RFA. For their industries, because CFCs are such a minor portion of total product costs, price increases of the magnitude anticipated by this regulation would not result in significant economic impacts.

The preliminary RFA suggests that different segments of the foamblowing industry are likely to be affected to different extents depending on the availability of chemical substitutes versus alternative products. For example, the polystyrene foam blowers may be able to shift from CFC-12 to HCFC-22 without incurring large capital costs and therefore would remain competitive with paper and other forms of packaging. In the case of rigid foam, price increases may cause some loss of market share to non-CFC blown foam or to other materials. Due to data limitations and the inability to accurately model behavioral changes, the number of firms that might go out of business versus the number that would shift to providing other insulating material could not be determined.

In designing and evaluating its regulatory options, EPA sought to minimize the burdens placed on small firms. In addition, the proposed hybrid approach (allocated quotas plus targetted regulations) would further reduce potential increases in CFC prices and thereby reduce the impact on the foamblowing industry. Because foam blowing is one of the major uses of CFCs, providing foam blowers with set asides and outright exemptions would have substantial impacts on efforts to protect the ozone layer or substantially increase costs to other industries.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, Washington, DC 20530 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

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Date: December 1, 1987.

Lee M. Thomas,

Administrator.

United Nations Environment Programme

MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER

Final Act, 1987

Montreal Protocol on Substances That Deplete the Ozone Layer

The Parties to this Protocol,

Being Parties to the Vienna Convention for the Protection of the Ozone Layer,

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone 1 year,

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment,

Conscious of the potential climatic effects of emissions of these substances,

Aware that measures taken to protect the ozone layer from depletion should be based on relevant scientific knowledge, taking into account technical and economic considerations,

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations,

Acknowledging that special provision is required to meet the needs of developing countries for these substances,

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels,

Considering the importance of promoting international co-operation in the research and development of science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

Have agreed as follows:

Artcle I: Definitions

For the purposes of this Protocol:

1. "Convention means the Vienna Convention for the Protection of the Ozone Layer, adopted on 22 March 1985.

2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol.

3. "Secretariat" means the secretariat of the Convention.

4. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or in a mixture. It excludes, however, any such substance or mixture which is in a manufactured product other than a container used for the transportation or storage of the substance listed.

5. "Production" means tbe amount of controlled substances produced minus the amount destroyed by technologies to be approved by the Parties.

6. "Consumption" means production plus imports minus exports of controlled substances.

7. "Calculated levels" of production, imports, exports and consumption means levels determined in accordance with Article 3.

8. "Industrial rationalization" means the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

Article 2: Control Measures

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.

2. Each Party shall ensure that for the twelve-month period commencing on the first day of the thirty-seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances listed in Group II of Annex A does not exceed its calculated level of consumption in 1986. Each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review.

3. Each Party shall ensure that for the period 1 July 1993 to 30 June 1994 and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, eighty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not

exceed, annually, eighty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

4. Each Party shall ensure that for the period 1 July 1998 to 30 June 1999, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply unless the Parties decide otherwise at a meeting by a two-thirds majority of Parties present and voting, representing at least two-thirds of the total calculated level of consumption of these substances of the Parties. This decision shall be considered and made in the light of the assessments referred to in Article 6.

5. Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, for the purposes of industrial rationalization, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer.

6. Any Party not operating under Article 5, that has facilities for the production of controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.

7. Any transfer of production pursuant to paragraph 5 or any addition of production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition.

8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1(6) of the Convention may agree that they shall jointly fulfill their obligations respecting consumption under this Article provided that their total combined calculated level of consumption does not exceed the levels required by this Article.

(b) The Parties to any such agreement shall inform the secretariat of the terms of the agreement before the date of the reduction in consumption with which the agreement is concerned.

(c) Such agreement will become operative only if all Member States of the regional economic integration organization and the organization concerned are Parties to the Protocol and have notified the secretariat of their manner of implementation.

9. (a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:

(i) adjustments to the ozone depleting potentials specified in Annex A should be made and, if so, what the adjustments should be; and

(ii) further adjustments and reductions of production or consumption of the controlled substances from 1986 levels should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be.

(b) Proposals for such adjustments shall be communicated to the Parties by the secretariat at least six months before the meeting of the Parties at which they are proposed for adoption.

(c) In taking such decisions, the Parties shall make every effort to reach agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, such decisions shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting representing at least fifty per cent of the total consumption of the controlled substances of the Parties.

(d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.

10. (a) Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide:

(i) Whether any substances, and if so which, should be added to or removed from any annex to this Protocol; and

(ii) The mechanism, scope and timing of the control measures that should apply to those substances;

(b) Any such decision shall become effective, provided that it has been accepted by a two-thirds majority vote of the Parties present and voting.

11. Notwithstanding the provisions contained in this Article, Parties may take more stringent measures than those required by this Article.

Article 3: Calculation of Control Levels

For the purposes of Articles 2 and 5, each Party shall, for each Group of substances in Annex A, determine its calculated levels of:

(a) Production by:

(i) Multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A; and

(ii) Adding together, for each such Group, the resulting figures;

(b) Imports and exports, respectively, by following, *mutatis mutandis*, the procedure set out in subparagraph (a); and

(c) Consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

Article 4: Control of Trade With Non-Parties

1. Within one year of the entry into force of this Protocol, each Party shall ban the import of controlled substances from any State not party to this Protocol.

2. Beginning on 1 January 1993, no Party operating under paragraph 1 of Article 5 may export any controlled substance to any State not party to this Protocol.

3. Within three years of the date of the entry into force of this Protocol, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances. Parties that have

not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

4. Within five years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to it in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

5. Each Party shall discourage the export, to any State not party to this Protocol, of technology for producing and for utilizing controlled substances.

6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.

7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances.

8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 3 and 4 may be permitted from any State not party to this Protocol if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2 and this Article, and has submitted data to that effect as specified in Article 7.

Article 5: Special Situation of Developing Countries

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet its basic domestic needs, be entitled to delay its compliance with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures.

2. The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives.

3. The Parties undertake to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to Parties that are developing countries for the use of alternative technology and for substitute products.

Article 6: Assessment and Review of Control Measures

Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the secretariat, to the Parties.

Article 7: Reporting of Data

1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available.

2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate.

Article 8: Non-Compliance

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

Article 9: Research, Development, Public Awareness and Exchange of Information

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:

(a) Best technologies for improving the containment, recovery, recycling or destruction of controlled substances or otherwise reducing their emissions;

(b) Possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and

(c) Costs and benefits of relevant control strategies.

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article.

Article 10: Technical Assistance

1. The Parties shall, in the context of the provisions of Article 4 of the Convention, and taking into account in particular the needs of developing countries, co-operate in promoting technical assistance to facilitate participation in and implementation of this Protocol.

2. Any Party or Signatory to this Protocol may submit a request to the secretariat for technical assistance for the purposes of implementing or participating in the Protocol.

3. The Parties, at their first meeting, shall begin deliberations on the means of fulfilling the obligations set out in Article 9, and paragraphs 1 and 2 of this Article, including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. States and regional economic integration organizations not party to the Protocol should be encouraged to participate in activities specified in such workplans.

Article 11: Meetings of the Parties

1. The Parties shall hold meetings at regular intervals. The secretariat shall convene the first meeting of the Parties

not later than one year after the date of the entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.

2. Subsequent ordinary meetings of the Parties shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

3. The Parties, at their first meeting, shall:

(a) Adopt by consensus rules of procedure for their meetings;

(b) Adopt by consensus the financial rules referred to in paragraph 2 of Article 13;

(c) Establish the panels and determine the terms of reference referred to in Article 6;

(d) Consider and approve the procedures and institutional mechanisms specified in Article 8; and

(e) Begin preparation of workplans pursuant to paragraph 3 of Article 10.

4. The functions of the meetings of the Parties shall be to:

(a) Review the implementation of this Protocol;

(b) Decide on any adjustments or reductions referred to in paragraph 9 of Article 2;

(c) Decide on any addition to, insertion in or removal from any annex of substances and on related control measures in accordance with paragraph 10 of Article 2;

(d) Establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 9;

(e) Review requests for technical assistance submitted pursuant to paragraph 2 of Article 10;

(f) Review reports prepared by the secretariat pursuant to subparagraph (c) of Article 12;

(g) Assess, in accordance with Article 6, the control measures provided for in Article 2;

(h) Consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex;

(i) Consider and adopt the budget for implementing this Protocol; and

(j) Consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Protocol, may be represented at meetings of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

Article 12: Secretariat

For the purposes of this Protocol, the secretariat shall:

(a) Arrange for and service meetings of the Parties as provided for in Article 11;

(b) Receive and make available, upon request by a Party, data provided pursuant to Article 7;

(c) Prepare and distribute regularly to the Parties reports based on information received pursuant to Articles 7 and 9;

(d) Notify the Parties of any request for technical assistance received pursuant to Article 10 so as to facilitate the provision of such assistance;

(e) Encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;

(f) Provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-party observers; and

(g) Perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.

Article 13: Financial Provisions

1. The funds required for the operation of this Protocol, including those for the functioning of the secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.

2. The Parties, at their first meeting, shall adopt by consensus financial rules for the operation of this Protocol.

Article 14: Relationship of This Protocol to the Convention

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

Article 15: Signature

This Protocol shall be open for signature by States and by regional economic integration organizations in Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at United Nations Headquarters in New York from 17 January 1988 to 15 September 1988.

Article 16: Entry Into Force

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by that date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a Party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 17: Parties Joining After Entry Into Force

Subject to Article 5, any State or regional economic integration organization which becomes a Party to this Protocol after the date of its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, as well as under Article 4, that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force.

Article 18: Reservations

No reservations may be made to this Protocol.

Article 19: Withdrawal

For the purposes of this Protocol, the provisions of Article 19 of the Convention relating to withdrawal shall apply, except with respect to Parties referred to in paragraph 1 of Article 5. Any such Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in paragraphs 1 to 4 of Article 2. Any such withdrawal shall take effect

upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 20: Authentic Texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized to that effect, have signed this protocol.

Done at Montreal this sixteenth day of September, One Thousand Nine Hundred and Eighty Seven.

ANNEX A.—CONTROLLED SUBSTANCES

Group	Substance	Ozone depleting potential [1]
Group I:	$CFCl_3$ (CFC-11)	1.0
	CF_2Cl_2 (CFC-12)	1.0
	$C_2F_3Cl_3$ (CFC-113)	0.8
	$C_2F_4Cl_2$ (CFC-114)	1.0
	C_2F_5Cl (CFC-115)	0.6
Group II:	CF_2BrCl (halon-1211)	3.0
	CF_3Br (halon-1301)	10.0
	$C_2F_4Br_2$ (halon-2402)	([2])

[1] These ozone depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.
[2] To be determined.

For the reasons set out in the preamble, Part 82 of Title 40 of the Code of Federal Regulations is proposed as follows:

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Part 82 is amended by adding the following §§ 82.1 through 82.14 and appendices A through D to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

Sec.

Authority: 42 U.S.C. 7457(b).

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the *Montreal Protocol on Substances that Deplete the Ozone Layer* under authority provided by section 157 of the Clean Air Act. The Montreal Protocol requires each nation that becomes a Party to the Protocol to limit its total production and its consumption (defined as production plus imports minus exports) of certain ozone-depleting substances according to a specified schedule. The Protocol also requires Parties to impose certain restrictions on trade in ozone-depleting substances with nonparties.

(b) This rule applies to any individual, corporate, or governmental entity that produces, imports, or exports controlled substances.

§ 82.2 Effective date.

The regulations under this Part will take effect when the Montreal Protocol enters into force. The Montreal Protocol will enter into force on January 1, 1989, provided that at least 11 instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and provided that the Vienna Convention for the Protection of the Ozone Layer has entered into force. If these conditions have not been fulfilled by January 1, 1989, the Protocol will enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

§ 82.3 Definitions.

As used in this Part, the term:

(a) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) "Baseline consumption rights" means the consumption rights apportioned under Sec. 82.6.

(c) "Baseline production rights" means the production rights apportioned under Sec. 82.5.

(d) "Calculated level" means the level of production, exports or imports of controlled substances determined for each Group of controlled substances by:

(1) Multiplying the amount (in kilograms) of production, exports or imports of each controlled substance by that substance's ozone depletion weight listed in Appendix A to this Part; and

(2) Adding together the resulting products for the controlled substances within each Group.

(e) "Consumption rights" means the privileges granted by this Part to produce and import calculated levels of controlled substances; however, consumption rights may be used to produce controlled substances only in conjunction with production rights. A person's consumption rights are the total of the rights he obtains under Secs. 82.7 (baseline rights for Group I controlled substances), 82.8 (baseline rights for Group II controlled substances), and 82.10 (additional consumption rights upon proof of exports of controlled substances), as may be modified under Sec. 82.12 (transfer of rights).

(f) "Control periods" means those periods during which the prohibitions under Sec. 82.4 apply. Those periods are:

(1) For Group I controlled substances: [reserved]

(2) For Group II controlled substances: [reserved]

(g) "Controlled substance" means any substance listed in Appendix A to this Part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance listed.

(h) "Export" means the transport of controlled substances from within the United States or its territories to persons or countries outside the United States or its territories.

(i) "Facility" means any process equipment (e.g., reactor, distillation column) to convert raw materials or feedstock chemicals into controlled substances.

(j) "Import" means the transport of controlled substances from outside the United States or its territories to persons within the United States or its territories.

(k) "Montreal Protocol" means the *Montreal Protocol on Substances that*

Deplete the Ozone Layer which was adopted on September 16, 1987, in Montreal, Canada.

(l) "Nations complying with, but not joining, the Protocol" means any nation listed in Appendix C to this Part.

(m) "Party" means any nation that is a party to the Montreal Protocol and listed in Appendix B to this Part.

(n) "Person" means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(o) "Plant" means one or more facilities at the same location owned by or under common control of the same person.

(p) "Potential production rights" means the production rights obtained under Sec. 82.9 (a) and (b).

(q) "Production" means the manufacture of a controlled substance from any raw material or feedstock chemical; however, production does not include the manufacture of controlled substances that are used and entirely consumed in the production of other chemicals.

(r) "Production rights" means the privileges granted by this Part to produce calculated levels of controlled substances; however, production rights may be used to produce controlled substances only in conjunction with consumption rights. A person's production rights are the total of the rights he obtains under Secs. 82.7 (baseline rights for Group I controlled substances), 82.8 (baseline rights for Group II controlled substances), and 82.9 (c) and (d) (additional production rights), as may be modified under Sec. 82.12 (transfer of rights).

(s) "Twenty-five-kilotonne Party" means any nation listed in Appendix D to this Part.

(t) "Unexpended consumption rights" means consumption rights that have not been used. At any time in any control period, a person's unexpended consumption rights are the total of the calculated level of consumption rights he holds at that time for that control period, minus the calculated level of controlled substances that the person has produced and imported in that control period until that time.

(u) "Unexpended production rights" means production rights that have not been used. At any time in any control period, a person's unexpended production rights are the total of the calculated level of production rights he holds at that time for that control period, minus the calculated level of controlled substances that the person has produced in that control period until that time.

§ 82.4 Prohibitions.

(a) No person may produce at any time in any control period, a calculated level of controlled substances in excess of the amount of unexpended production rights held by that person at that time for that control period. Every kilogram of such excess constitutes a separate violation of this regulation.

(b) No person may produce or import at any time in any control period, a calculated level of controlled substances in excess of the amount of unexpended consumption rights held by that person at that time for that control period. Every kilogram of such excess constitutes a separate violation of this regulation.

(c) A person may not use his production rights to produce a quantity of controlled substances unless he owns at the same time consumption rights sufficient to cover that quantity of controlled substances, nor may he use his consumption rights to produce a quantity of controlled substances unless he owns at the same time production rights sufficient to cover that quantity of controlled substances. However, consumption rights alone are required to import controlled substances.

(d) Beginning one year after the effective date of this Part, no person may import any quantity of controlled substances from any nation not listed in Appendix B to this Part (Parties to the Montreal Protocol), unless that nation is listed in Appendix C to this Part (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

§ 82.5 Apportionment of baseline production rights.

Persons who produced one or more controlled substances in 1986 are apportioned calculated levels of baseline production rights as set forth in paragraphs (a) and (b) of this section. Each person's apportionment is equivalent to the calculated levels of that person's production of Group I and Group II controlled substances in 1986.

(a) For Group I controlled substances:

Person	Calculated level
[Reserved]	[Reserved].

(b) For Group II controlled substances:

Person	Calculated level
[Reserved]	[Reserved].

§ 82.6 Apportionment of baseline consumption rights.

Persons who produced, imported, or produced and imported one or more controlled substances in 1986 are apportioned calculated levels of baseline consumption rights as set forth in paragraphs (a) and (b) of this section. The apportionment for each person who imported controlled substances is equivalent to the calculated levels of Group I and Group II controlled substances that the person imported in 1986. The apportionment for each person who produced controlled substances is equivalent to the calculated levels of Group I and Group II controlled substances that the person produced in 1986, multiplied by a correction factor. The general equation for the correction factor is (the calculated level of 1986 United States production minus the calculated level of 1986 United States exports) divided by (the calculated level of 1986 United States production); correction factors are separately calculated for Group I and Group II controlled substances.

(a) For Group I controlled substances:

Person	Calculated level
[Reserved]	[Reserved].

(b) For Group II controlled substances:

Person	Calculated level
[Reserved]	[Reserved].

§ 82.7 Grant and phased of baseline production and consumption rights for group I controlled substances.

(a) For each of the control periods that ends before July 1, 1993, every person is granted 100 percent of the baseline production and consumption rights apportioned to him under Secs. 82.5(a) and 82.6(a).

(b) For each of the control periods that occurs between July 1, 1993, and June 30, 1998, inclusive, every person is granted 80 percent of the baseline production and consumption rights apportioned to him under §§ 82.5(a) and 82.6(a).

(c) For each of the control periods that begins after June 30, 1998, every person is granted 50 percent of the base-line production and consumption rights apportioned to him under §§ 82.5(a) and 82.6(a).

§ 82.8 Grant and freeze of baseline production and consumption rights for group II controlled substances.

For each of the control periods specified in § 82.3(f)(2), every person is granted 100 percent of the baseline production and consumption rights apportioned to him under § 82.5(b) and 82.6(b).

§ 82.9 Allowance for production rights in addition to baseline production rights.

(a) Every person apportioned baseline production rights for Group I controlled substances under § 82.5(a) is also granted a calculated level of potential production rights equivalent to:

(1) 10 percent of his apportionment under § 82.5(a), for each control period ending before July 1, 1998; and

(2) 15 percent of his apportionment under § 82.5(a), for each control period beginning after June 30, 1998.

(b) Every person apportioned baseline production rights for Group II controlled substances under § 82.5(b) is also granted a calculated level of potential production rights equivalent to 10 percent of his apportionment under § 82.5(b), for each control year specified in § 82.3(f)(2).

(c) A person may convert potential production rights, either granted to him under paragraphs (a) and (b) of this section or obtained by him under § 82.12 (transfer of rights), to production rights only to the extent authorized by the Administrator under § 82.11 (Exports to Parties). A person may obtainauthorization to convert potential production rights to production rights either by requesting issuance of a notice under § 82.1lor by completing a transfer of authorization under § 82.12.

(d) Any person ("the recipient") may obtain productionrights in accordance with the provisions of this paragraph.

(1) A nation listed in Appendix D to this Part (Twenty-five-kilotonne Parties) must agree to transfer to the recipient at a specified time some amount of the calculated level of production that the nation is permitted under the Montreal Protocol. The recipient must obtain from the principal diplomatic representative in that nation's embassy in the United States a document clearly stating that that nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient and for the control period(s) to which the transfer applies.

(2) The recipient must submit to the Administrator a transfer request that includes a true copy of the document required by paragraph (d)(1) of this section and that sets forth the following:

(i) The identity and address of the recipient;

(ii) The identity of the Twenty-five-kilotonne Party;

(iii) The names and telephone numbers of contact persons for the recipient and for the Twenty-five-kilotonne Party;

(iv) The amount of allowable calculated level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (d)(2) of this section, the Administrator will:

(i) Notify the Secretariat of the Montreal Protocol of the transfer; and

(ii) Issue the recipient a notice granting the recipient production rights equivalent to the calculated level of production transferred, and specifying the control periods to which the grant of production rights applies. The grant of production rights will be effective on the date that the notice is issued.

§ 82.10 Allowance for consumption rights in addition to baseline consumption rights.

(a) Except as limited by paragraph (b) of this section, any person may obtain, in accordance with the provisions of this paragraph, consumption rights equivalent to the calculated level of controlled substances that the person has exported from the United States or its territories. The consumption rights granted under this section will be valid only during the control period in which the exports arrived in the country to which they were transported.

(1) The person who exported (the "exporter") the controlled substances must submit to the Administrator a request for consumption rights setting forth, with supporting documentation, the following:

(i) The identities and addresses of the exporter and the recipient of the exports (the "importer");

(ii) The exporter's EIN (Employer Identification Number);

(iii) The names and telephone number of contact persons for the exporter and for the importer;

(iv) The quantity and type of controlled substances exported;

(v) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vi) The country to which the controlled substances were exported and the date on which they arrived in that country;

(vii) The source from which and the date on which the exporter purchased the controlled substances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and issue the exporter a notice granting the exporter consumption rights equivalent to the calculated level of controlled substances that the documentation verifies were exported. The grant of the consumption rights will be effective on the date the notice is issued.

(b) No consumption rights will be granted after January 1, 1993, for exports of controlled substances to any nation not listed in Appendix B to this Part (Parties to the Montreal Protocol).

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production rights to production rights by exporting controlled substances to nations listed in Appendix B to this Part (Parties to the Protocol). Authorization obtained under this section will be valid only during the control period in which the controlled substances arrived in the party to which they were exported. A request for authorization under this section will be considered a request for consumption rights under § 82.10, as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production rights to production rights. That request must set forth, with supporting documentation, the following:

(1) The identities and addresses of the exporter and the importer;

(2) The exporter's EIN number;

(3) The names and telephone numbers of contact persons for the exporter and for the importer;

(4) The quantity and type of controlled substances exported;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported and the date on which they arrived in that country; and

(7) The source from which and the date on which the exporter purchased the controlled substances exported.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances that the documentation verifies were exported to a party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production rights to production rights in a specified control year, and granting

consumption rights in the same amount for the same control year. The authorization may be used to convert potential production rights to production rights as soon as the date on which the notice is issued.

§ 82.12 Transfers of Production and Consumption Rights.

Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption rights, production rights, potential production rights, or authorization to convert potential production rights to production rights, as follows:

(a) The transferor must submit to the Administrator a transfer request setting forth the following:

(1) The identities and addresses of the transferor and the transferee;

(2) The names and telephone numbers of contact persons for the transferor and for the transferee;

(3) The type of rights (i.e., consumption rights, production rights, or potential production rights) or authorization being transfered;

(4) The Group of controlled substances to which the rights or authorization being transferred pertains;

(5) The amount of rights or authorization being transferred;

(6) The control period(s) for which the rights or authorization are being transferred; and

(7) The amount of unexpended rights of the type and for the control period being transferred that the transferor holds as of the date of the request.

(b) If the records maintained by the Administrator, taking into account any previous trades and any production or imports reported by the transferor, indicate that the transferor possessed, as of the date the transfer request was processed, unexpended rights or authorization sufficient to cover the transfer request, the Administrator will issue a notice of transfer to the transferee and the transferor. The notice will specify the transferor and transferee, and the amount, type and control year of the rights or authorization transferred. The transfer will be effective on the date the notice of transfer is issued.

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect as follows:

(1) For Group I controlled substances, beginning with the first day of the first control period specified in § 82.3(f)(1).

(2) For Group II controlled substances, beginning with the first day of the first control period specified in § 82.3(f)(2).

(b) Unless otherwise specified, reports required by this section must be mailed within 15 days of the end of the applicable reporting period to the Administrator.

(c) Records and copies of reports required by this section must be retained for four years.

(d) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(e) Every person ("producer") who will produce controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) By the first day of each control period, every producer must submit to the Administrator a plan estimating for each of his facilities the type and amount of controlled substances he will produce and the time periods during which the controlled substances will be produced. The plan must also include estimates of the quantities of chlorodifluoromethane (HCFC–22) and hexafluoroethane (CFC–116) each of these facilities will produce in that control period. Any change in the plan during the control period must be communicated to the Administrator no later than the month following the change, as part of the monthly report required under paragraph (e)(3) of this section.

(2) Every producer must maintain the following:

(i) Daily records of the quantity of each of the controlled substances produced at each facility, including controlled substances produced for feedstock purposes;

(ii) Daily records of the quantity of HCFC–22 and CFC–116 produced at each facility also producing controlled substances;

(iii) Continuous records of the reactive temperature and operating pressures within the primary reactor and initial distillation column during the production operations at each facility; and

(iv) Daily records of the quantity of the following raw materials and feedstock chemicals purchased for and used at each plant: carbon tetrachloride, perchloroethylene, chloroform, hydrofluoric acid, hydrochloric acid, bromine, CFC–113, HCFC–22, and CFC–23.

(v) Daily records of the quantity and purchaser of controlled substances produced at each plant.

(3) For each month, every producer must provide the Administrator with a report containing the following information:

(i) The production and sales in that month of each controlled substance, specifying the quantity of any controlled substance used for feedstock purposes for each plant and totaled for all plants owned by the same person;

(ii) The quantities of HCFC–22 and CFC–116 produced that month at the same facilities producing any of the controlled substances for each plant;

(iii) A description of any shifts that have occurred that month in the planned utilization of facilities as described in the plan provided to the Administrator under paragraph (e)(1) of this section;

(iv) The total for that month and for the control-period-to-date of calculated levels of production for Group I and Group II controlled substances for each plant;

(v) The producer's total consumption rights, potential production rights, production rights and authorization to convert potential production rights to production rights, as of the end of that month; and

(vi) The quantity and names and addresses of the source of recyclable or recoverable materials containing the controlled substance which is recovered at each plant. For any person who fails to maintain the records and reports required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records or reports were not kept, for purposes of determining whether the person has violated the prohibitions at Sec. 82.4.

(f) For Group I controlled substances, beginning with the first control period specified under Sec. 82.3(f)(1), and for Group II controlled substances, beginning one year after the Montreal Protocol enters into force, any person ("importer") who imports controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Any importer must maintain the following daily records:

(i) The quantity of each controlled substance imported, either alone or in mixtures;

(ii) The date on which the controlled substances were imported;

(iii) The port of exit and port of entry through which the controlled substances passed; and

(iv) The dates on which and the country in which the imported controlled substances were produced.

(2) For each month, every importer must submit to the Administrator a

report containing the following information:

(i) The daily records required in paragraph (g)(1) of this section for the previous month;

(ii) The total for that month and for the control-period-to-date of calculated levels of imports for Group I and Group II controlled substances; and

(iii) The importer's total consumption rights at the end of that month.

(g) For any exports of controlled substances not reported under Secs. 82.10 (additional consumption rights) or 82.11 (Exports to Parties), the person ("exporter") who exported the controlled substances must submit to the Administrator the following information within one month of the otherwise unreported exports leaving the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's EIN number;

(3) The type and quantity of controlled substances exported;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported and the date on which they arrived in that country; and

(6) The source from which and that date on which the exporter purchased the controlled substances exported.

§ 82.14 Payment of fees.

[Reserved]

Appendix A to Part 82—Controlled Substances and Ozone Depletion Weights

Controlled substances	Ozone depletion weights
A. Group I:	
CFCl3—Trichlorofluormethane (CFC-11)	1.0
CCl2F2—Dichlorodifluoromethane (CFC-12)	1.0
CCl2F-CClF2—Trichlorotrifluorethane (CFC-113)	0.8
CF2Cl-CClF2—Dichlorotetrafluoroethane (CFC-114)	1.0
CClF2-CF3—(Mono)chloropentafluoroethane (CFC-115)	0.6
B. Group II:	
CF2BrCl—Bromochlorodifluoromethane (Halon 1211)	3.0
CF3Br—Bromotrifluoromethane (Halon 1301)	10.0
C2F4Br2—Dibromotetrafluoroethane (Halon 2402)	6.0

Appendix B to Part 82—Parties to the Montreal Protocol

[Reserved]

Appendix C to Part 82—Nations Complying With, But Not Parties to, the Protocol

[Reserved]

Appendix D to Part 82—Twenty-Five-Kilotonne Parties

[Reserved]

[FR Doc. 87-28215 Filed 12-11-87; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Monday
December 14, 1987

Part III

Department of Transportation

Coast Guard

33 CFR Parts 95, 146, 150, 173 and 177
46 CFR Parts 4, 5, 26, 35, 78, 97, 109, 167, 185, 196 and 197
Operating a Vessel While Intoxicated; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95, 146, 150, 173, and 177

46 CFR Parts 4, 5, 26, 35, 78, 97, 109, 167, 185, 196, and 197

[CGD 84-099]

Operating a Vessel While Intoxicated

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is setting standards and establishing rules designed to monitor, control, and reduce alcohol and drug use in both recreational vessel operation and commercial marine operations including operations on the Outer Continental Shelf and at deepwater ports. This final rule sets forth those standards for both recreational and commercial vessels, as well as delineating who is considered to be operating a vessel. In addition, the rule: (1) Prescribes several operating requirements for vessels subject to inspection under Chapter 33 of Title 46, United States Code; (2) provides for personnel licensed, registered, or documented by the Coast Guard to seek rehabilitation prior to being subject to a proceeding to suspend or revoke their license, certificate of registry, or merchant mariners' document for alcohol or drug related incompetence; (3) allows Coast Guard personnel to terminate use of certain vessels when the operator appears to be under the influence of an intoxicant to the extent that further operation of the vessel creates an unsafe condition; and (4) amends the regulations requiring reports of all marine casualties to include specific information on the role of alcohol or drug use in the casualty. The rule also makes miscellaneous amendments to several subparts.

EFFECTIVE DATE: January 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Sean T. Connaughton, Office of Marine Safety, Security and Environmental Protection (G-MVP), Phone (202) 267-0214, for information on commercial vessel operating requirements.

Mr. Carlton Perry, Office of Boating, Public, and Consumer Affairs (G-BBS), Phone (202) 267-0979, for information on recreational boating intoxication standards, casualty reporting and the terminations for unsafe use.

LCDR David Wallace, Office of Marine Safety, Security and Environmental Protection (G-MMI), Phone (202) 267-1420, for information on commercial vessel casualty reporting and the rehabilitation program.

The above persons can be contacted at U.S. Coast Guard Headquarters 2100 Second Street SW., Washington, DC 20593, between 9 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard is required by provisions of the Coast Guard Authorization Act of 1984 (Pub. L. 98-557) to establish appropriate standards for determining whether an individual is intoxicated while operating a vessel. This Act amended Title 46 United States Code (U.S.C.) 2302(c) to provide that "An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—(1) liable to the United States Government for a civil penalty of not more than $1,000; or (2) fined not more than $5,000, imprisoned for not more than one year, or both." The Act also amended 46 U.S.C. 6101 and 6102 to require that marine casualty reports include information as to whether the use of alcohol or drugs contributed to the casualty.

On May 23, 1986, the Coast Guard published concurrently an Advance Notice of Proposed Rulemaking (CGD 84-099A; 51 FR 18900) and a Notice of Proposed Rulemaking (CGD 84-099; 51 FR 18902) on Operating a Vessel While Intoxicated. The Advance Notice posed several questions and issues relating to the operation of recreational vessels while intoxicated, while the Notice proposed rules and standards for individuals operating a commercial vessel while intoxicated, most of which would be incorporated into a new Part 95 of Title 33, Code of Federal Regulations. The comment period for both Notices ended on August 21, 1986.

Based on comments received on both projects, a combination Notice and Supplemental Notice of Proposed Rulemaking was published on February 9, 1987 (52 FR 4116). While intended primarily to address issues relating to recreational boating, this notice proposed several revisions to the commercial marine rulemaking. The Notice/Supplemental Notice comment period ended on May 11, 1987.

Now, based on all comments received, the Coast Guard is issuing this final rule containing the standards and rules designed to monitor, control, and reduce alcohol and drug use in both recreational vessel operations and commercial marine operations. This rule also makes miscellaneous amendments correcting statutory references, eliminating duplicate provisions, and conforming casualty reporting requirements to the codification of Title 46 U.S.C., as proposed in the May 23, 1986 NPRM. This final rule combines the two separate dockets, 84-099 and 84-099A, into one.

Discussion of Comments

33 CFR Part 95—Recreational Vessel Operator Standards

The Notice of Proposed Rulemaking (NPRM) solicited public comment on establishing Federal standards for intoxication which would provide for a behavioral standard and an alcohol concentration standard conforming to an enacted State standard for blood alcohol concentration (BAC). A total of 32 comments were received. Recreational and commercial organizations and national boating interests, with memberships totaling over a million boaters, submitted six of the total comments received. The National Transportation Safety Board also commented on the NPRM, based on their research into accidents and accident prevention.

The comments came from the following groups in the numbers noted:

4 recreational boaters.
9 commercial or licensed operators.
1 recreational boating association.
7 commercial boating interests.
1 national boating interest.
6 State Boating Law Administrators.
3 individual boating interests.
1 Federal agency.

Most of the comments did not address all of the proposed rule. A number of comments reiterated earlier suggestions made on the May 23, 1986, ANPRM, or commented anew on commercial aspects of the proposed rule. Although the comments on recreational issues did not clearly favor any specific approach, they overwhelmingly supported the need to take action against intoxicated operators. The following is a section by section summary of the comments received in response to the NPRM.

1. General Comments

All six State Boating Law Administrators and the American Institute of Marine Underwriters supported the proposed regulations and urged rapid issuance of the final rule. Several of the comments commended the Coast Guard for its efforts on this important issue. Conversely, several comments questioned the significance of the number of alcohol or drug related accidents and deaths compared to the number of boats in use and urged the Coast Guard to be a "service" agency instead of a "police" agency.

One comment suggested licensing the operator, since operating a vessel is a privilege, not a civil liberty, and preferred the breath test to blood test due to danger from AIDS, but objected to other aspects of the proposed rulemaking, including: lack of public hearings, danger from enforcement procedures offshore or due to inexperience, criminal penalties too vague, too much police power and potential for abuse, and local enforcement agencies driving expensive high powered "toys" at taxpayers' expense.

Saving lives is a primary Coast Guard mission. The Coast Guard believes that boating accidents and fatalities involving alcohol or drugs will be reduced by publicity and enforcement of these rules. The regulations respond to Congress' direction to set standards by regulation for determining whether an individual is intoxicated. The Coast Guard agrees that the States have the primary responsibility for law enforcement regarding recreational boats. However, the Coast Guard is a law enforcement agency and must be capable of enforcing the regulations required by Congress. Although accidents involving recreational boats are normally investigated by State or local agencies, the Coast Guard will continue to investigate accidents. These standards will be used in enforcement actions arising from those investigations and when intoxicated operators are encountered during a boarding or for other reasons. The Coast Guard plans to develop appropriate training for its boarding officers and directives to implement this rule. The rulemaking does not require any increased enforcement activity by State or local authorities.

The Coast Guard has not received any other request to hold public hearings and there is no indication that the rulemaking would be improved by holding hearings.

2. Purpose

One comment supported implementing the prohibition in 46 U.S.C. 2302 of operating a vessel while *in fact* intoxicated, but cautioned that the implementation methods and intoxication standards must be developed with an understanding of the situations and conditions to which they apply, and with respect to constitutional and other rights of boatmen.

The Coast Guard agrees and has proposed differing standards for recreational and commercial vessels. Our enforcement policies and guidance will be sensitive to the circumstances and rights of boatmen.

3. Applicability

Two comments concurred that the proposed rule should apply to the operation of *all* vessels. One comment suggested this section not use the phrase "and vessels owned in the United States on the high seas" because of problems interpreting "on the high seas" and legality of such enforcement. The comment also suggested deleting the sentence clarifying applicability to foreign vessels as unnecessary information in the section.

The Coast Guard does not foresee problems with interpreting "on the high seas" or enforcing laws with regard to applicable vessels, and has retained the phrase. The phrase is used in 46 U.S.C. 2301, which establishes the applicability of these rules. "High seas" is defined in 33 CFR 2.05. The Coast Guard has also retained the clarification of applicability to foreign vessels for the benefit of mariners on those vessels who may be unsure of their need for compliance or who may follow another country's customs.

4. Definition of Terms Used in This Part

Several comments addressed the definition of "vessel owned in the United States", suggesting clarifying an apparent omission of boats numbered under laws of a State, and adding a definition of "vessel."

No change has been made to the definition of "vessel owned in the United States" as used in § 95.005, since State numbering systems are approved under the provisions of Chapter 123 of Title 46, United States Code. A definition of "vessel" has been added in § 95.010.

5. Operating a Vessel

Two comments suggested that the regulations should clarify that "operating" a recreational vessel means the vessel is "underway", to stay within the authorization of the law.

The statute does not define the term "operate." For many purposes, a commercial vessel is considered to be "operating" while moored to a dock or at anchor. The Coast Guard recognizes that recreational vessels may be used as vacation homes, or even primary residences, and that the activities of persons on board while the vessel is at anchor or moored differ from the activities taking place on commercial vessels. Therefore, the Coast Guard has limited the applicability of the rules to recreational vessels that are underway and included a definition of "underway" in § 95.010.

6. Standard of Intoxication

A number of comments addressed use of behavioral and BAC standards. Two comments opposed each other, suggesting that one standard only be used in support of the other. Two others supported the BAC level (.10%) proposed, but objected to the behavioral standard due to a lack of boarding officer qualifications and training, the possibility that fatigue and exposure to sun and heat can produce symptoms similar to intoxication, and that behavioral standards are easily subverted for harassment purposes. One comment suggested use of portable breath testing equipment as a final determinant or preliminary to requiring the operator to travel to an appropriate place for a BAC test, and urged making some real attempt to find a method, consistent with individual rights, to test for drugs other than alcohol. The NTSB lauded the use of both the subjective behavioral standard and the objective BAC standard, suggesting using an evolving standard of .08 percent offered in the Uniform Vehicle Code (UVC) and Model Traffic Ordinance. The NTSB also suggested defining alcohol concentration in terms of both blood and breath, such as defined in the UVC.

The Coast Guard has retained both BAC and behavioral standards, including their independent usage. Although BAC testing and behavioral observation can be used in combination to support the overall determination of intoxication, it must be stressed that the BAC and behavioral standards are independent of each other. A person may be tested and may not reach the threshold level of BAC, yet be intoxicated under the behavioral standard. Either standard determines intoxication and constitutes a violation of 46 U.S.C. 2302(c). Thus, the standards take into account a person's ability to "mask" intoxication or a person's susceptibility to intoxication.

The behavioral standard is based upon the definition in Section 4-2(14), Code of Virginia. This particular definition has been upheld by both the Virginia courts and Federal courts. A behavioral standard is essential for several reasons: First, in many instances, testing for blood alcohol concentration level may not be available within an acceptable time frame or the person may refuse to consent to a chemical test. Second, intoxication may be caused by drugs, or a combination of drugs and alcohol where the BAC level is not exceeded. In addition, while the blood alcohol levels are statistically sound, there may be

individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the BAC standard. The behavioral standard may also be used as a measure of what constitutes reasonable cause to test a person for drugs or alcohol.

The Coast Guard agrees with the NTSB on defining alcohol concentration and has adopted the definition used in the UVC. The Coast Guard has retained the .10% BAC level as the common BAC level in State boating laws and has not adopted the .08% BAC level, although this is becoming more common in State highway traffic laws. Should a similar trend develop in State boating laws, the Coast Guard will consider adopting the lower standard.

The Coast Guard plans to develop appropriate training for Coast Guard boarding officers in calibrating and using breath testing equipment. The Coast Guard currently conducts training in this area at the Boating Safety Course for State law enforcement officers. Also, the Coast Guard has awarded a grant to develop a training course in behavioral observation methods. Methods of testing for drugs other than alcohol will be included in the training course, and publicized as they are developed and become available.

7. Adoption of State Standards

Two comments supported the proposed adoption of State standards, one emphasizing applying the standards to all vessels. Another comment was concerned that adopting State BAC level standards meant exclusion of the use of State breath tests and State tests for drugs other than alcohol. The NTSB urged setting a Federal BAC standard at .08 percent and adopting only those State standards which were stricter than the Federal standard.

The Coast Guard has retained these provisions as proposed. This section does not exclude or include State *test* methods. It adopts State BAC level *standards,* where enacted, as Federal BAC level *standards.* The Coast Guard will describe appropriate methods for determining intoxication, including breath tests and tests for drugs other than alcohol, as they are developed and become available. The most common standard of those States setting a BAC standard is .10 percent. The existence of a Federal .10 percent BAC standard, even while adopting State standards that may be less strict, will still encourage States to strengthen their laws.

8. Determination of Intoxication

The NTSB commended the Coast Guard for proposing that refusal to submit to a test is admissible and presumptive of intoxication and urged that the provision be retained. One comment suggested refusal be a rebuttable presumption of intoxication. Another comment suggested refusal be used as evidence in court, but not as a presumption of intoxication.

One comment suggested a two step process for this section: First, using behavioral observation as a reasonable basis to direct a person to submit to toxicological testing; second, using the test results to determine intoxication.

One comment objected to this section for a number of reasons including: problems with using behavioral standards, provisions for anyone making the determination, opportunity for harassment of boaters, and presumption of intoxication for refusal to submit to a test when directed.

One comment suggested defining methods of toxicological testing which will be used, the provisions for training officers to administer tests, and what qualifications they must meet. One comment suggested that the term "in a timely manner" should be defined so as not to place too much discretion in the hands of the boarding officer.

One comment suggested clarifying that this section is applicable to *any* vessel, including recreational vessels.

The Coast Guard has retained the presumption of intoxication for refusal to take a test when directed to do so by a law enforcement officer. The Coast Guard intends to develop proper training of, and procure proper equipment for, its boarding officers to avoid the potential for misuse of authority and improper determinations. The Coast Guard already conducts training in this area at the Boating Safety Course for State law enforcement officers. Also the Coast Guard has awarded a grant to develop a training course in behavioral observation methods. Training in the calibration and use of breath testing equipment will also be conducted. Methods of testing for drugs other than alcohol will be included, and publicized, as they are developed and become available. The rule simply establishes the standards for determining intoxication. It does not attempt to establish training standards or methods of conducting tests. To do so would impose requirements on State and local law enforcement officers. These factors are properly considered during the hearing process in evaluating the weight to be given to the testimony or evidence presented.

While the behavioral standard may be used as a reasonable basis to test a person for drugs or alcohol, the behavioral standard is also intended to be an independent basis for determining intoxication. The Coast Guard has determined that a behavioral standard independent of a BAC standard is essential. There may be individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the BAC standards. Whatever the cause, the objective is to remove dangerously impaired operators from vessels to which 46 U.S.C. 2302 applies.

The term "timely manner" is not defined to allow for distance and transportation time considerations. While seven States require chemical testing within 2 to 4 hours of an arrest, the proximity of the test to the observed operation of the vessel is a factor that the hearing officer can consider in evaluating the weight to be given to the results.

Section 95.005 clearly states the applicability of Part 95, including § 95.017 (now issued as §§ 95.030 through 95.040).

33 CFR Part 95—Commercial Vessels

There were 106 comments received on the proposed rules applicable to commercial vessels in response to the May 23, 1986, Notice of Proposed Rulemaking and the February 9, 1987, Supplemental Notice of Proposed Rulemaking. The following categories of comments were received:

23 May 1986 NPRM

Mariners	37
Operating Companies	14
Marine Industry Associations	14
Pilot Association	1
Maritime Unions	3
NTSB	1
States and municipalities	6
Law Firm	1
Laboratory	1
Marine Related Firms	4
Training Institutions	3
Government Agencies	3
Total	88

9 February 1987 SNPRM

Mariners	9
Operating Companies	2
Marine Industry Associations	4
Pilot Association	1
Maritime Union	1
NTSB	1
Total	18

Several revisions were made in developing the final rule due to the comments received, all of which are discussed below.

9. Purpose

There was some concern over the possible interference of this rule with more stringent existing employer sponsored programs. While several comments were submitted on this subject, the fundamental issue involved is discussed in Recommendation #59 of the Towing Safety Advisory Committee (TSAC). The recommendation says, in part, "Many barge operators have longstanding corporate policies which prohibit the possession or consumption of alcohol aboard vessels. While TSAC recognizes that the pending Coast Guard rule on commercial vessel intoxication only seeks to establish intoxication standards as required by 46 U.S.C. 2302(c), and does not purport to govern questions of possession or consumption, it is of overriding importance that the regulatory text of this rule clarify that the establishment of an intoxication standard does not implicitly encourage alcohol consumption aboard commercial vessels, rather the opposite."

In response to this concern, the Coast Guard included the following statement in a new paragraph 95.001(b); "Nothing in this part shall be construed as limiting the authority of a vessel's marine employer to limit or prohibit the use or possession of alcohol on board a vessel." "Marine employer" is defined as the owner, managing operator, charterer, agent, master, or person in charge of a commercial vessel. The Coast Guard encourages employers to implement comprehensive programs to prevent the misuse of alcohol on their vessels and it is believed that the final rule will not negate company programs.

10. Applicability

Several comments raised the issue of the applicability and enforcement of these rules to foreign vessels within U.S. waters. One commenter believes this rule to be an "unwarranted interference with the routine commercial operation of merchant vessels." While the Coast Guard understands the concern over the application of these rules to foreign vessels, 46 U.S.C. 2302 clearly applies to the operation of foreign vessels while they are in U.S. waters. Intoxicated foreign seamen are as much a hazard to themselves, their shipmates, their vessel, the environment, and other vessels operating on the navigable waters of the United States, as intoxicated American seamen. Therefore, the application of this rule remains the same.

One commenter specifically requested to know when the rules will apply, particularly whether the rules govern the conduct of crewmembers ashore. The rules do not apply to a crewmember ashore, even on ships business, however, the operating rules contained in § 95.045 must be complied with. The rules will apply to a crewmember whenever that individual is operating a vessel, which, in most cases, will be whenever the individual is on board the vessel. It is the duty of all crewmembers to respond to emergencies or "call out" while on board. This is expressly recognized by 46 U.S.C. 8104.

11. Definition of Terms

There are several definitions added in the final rule; "alcohol concentration," "chemical test," "law enforcement officer," "marine employer," "recreational vessel," "underway," and "vessel." All these definitions were added to make the final rule easier to understand and to address comments questioning the meaning and application of terms used in the rule.

12. Operating a Vessel

There has been a major revision to this part due to comments received on the perceived inequality of the rule's application. In the SNPRM of February 9, 1987, it was proposed that all members of the crew of a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code, would be considered to be "operating a vessel" while, for other commercial and recreational vessels, only those persons who have "an essential role" in the operation of the vessel would be subject to the rules. The final rules apply to all members of the crew of any commercial vessel, not only those vessels subject to any manning requirement under Part F. This will guarantee uniformity and simplify compliance with, and enforcement of, the rule. The final rule has been altered throughout to reflect this philosophy. It should be noted that all members of the crew of a fishing vessel will be subject to the rules.

Several comments expressed particular concerns as to whether individuals who do not appear to be directly operating or navigating a vessel, such as stewards, should be considered to be "operating a vessel." It is the position of the Coast Guard that all crewmembers on board a vessel contribute to the function of the vessel or the accomplishment of its mission. In addition to their regularly assigned duties, each crewmember has additional safety related responsibilities, including emergency duties. All of these duties are inherently associated with the vessel's operation and the effects of intoxicants upon an individual's performance of these duties could pose a threat to the safety of the individual as well as to the vessel, its equipment, passengers, or crew. For these reasons, all crewmembers of a commercial vessel are considered to be "operating a vessel" and, as such, will be limited in their use of intoxicants.

13. Standard of Intoxication

There was overwhelming opposition to having two alcohol concentration levels for commercial vessels, depending on the category of vessel. Several comments questioned the reasoning behind the proposal, especially since commercial vessels of similar size and route would have different standards apply, and more importantly, that different standards may apply to the same vessel during different periods of operation. The final rule has a uniform alcohol concentration standard for all commercial vessels.

The issue of which alcohol concentration standard to use for the commercial marine industry was addressed by almost every comment. Several comments wanted anything over .00 alcohol concentration to be the standard of intoxication, others wanted a universal .10 alcohol concentration, still others wanted .05 or .08. The Coast Guard has decided to make the .04 standard applicable to all commercial vessels. As noted in the NPRM, there are several studies which indicate that impairment due to intoxicants begins around .04, and the Federal Aviation Administration and the Federal Railroad Administration have adopted similar standards. The Coast Guard realizes that this standard may appear low and that the commercial vessel standard will be a more stringent standard than the recreational vessel standard. However, commercial operators normally operate more frequently, and transport passengers or cargo or conduct other operations where the effect of errors can result in significant harm extending beyond the vessel and its personnel. The lower alcohol concentration level is intended to ensure that persons who receive compensation for operating commercial vessels are held to a high standard of conduct.

14. Determination of Intoxication

Comments submitted on both the NPRM and the SNPRM indicate confusion concerning the "determination of intoxication" and the role that non-law enforcement personnel have in making that "determination."

The proposed rule appeared to permit a determination of intoxication to be made, with its accompanying penalties, by a marine employer or law

enforcement officer without giving the individual suspected of intoxication the opportunity to rebut such charges. This was never intended by the Coast Guard. This section would only be utilized in administrative or judicial hearings with full opportunity to contest the charge. The comments criticized using non-law enforcement personnel in making determinations, the legality of such determinations, liability for wrongful determinations of intoxication, and the mechanics involved in actually making a determination. The number and volume of comments indicate general misunderstanding of this section.

In an effort to remove this misunderstanding, the entire section has been rewritten and restructured. None of the concepts of the original section are changed, rather they have been placed in a more understandable form. Section 95.030 now simply states that personal observation of apparent intoxicated behavior or a chemical test are acceptable as evidence of intoxication. This evidence may then be submitted at an administrative or judicial proceeding where the actual determination of intoxication would be made. The rule does not preclude the use of other evidence at a hearing, nor does it mandate the use of the specified evidence.

Section 94.035 outlines who may direct a chemical test, when reasonable cause exists to direct the taking of a chemical test, and some general testing requirements. Since marine employers are most likely to be in a position to recognize the need for testing an employee, the Coast Guard continues to permit those employers to require chemical testing for reasonable cause. The acceptability of a particular test required by a marine employer will be established during an administrative or judicial proceeding.

Section 94.050, states the effect of refusing chemical testing.

It is believed that this revised structure clearly states the process leading to a determination of whether an individual operating a vessel is intoxicated.

Several comments requested that the Coast Guard publish guidelines for making personal observations of intoxication. As stated previously, the Coast Guard is developing training materials on the subject and will distribute them to law enforcement personnel and marine employers.

15. General Operating Rules for Vessels Inspected Under Chapter 33 of Title 46 United States Code

The prohibition against assuming duties within four hours of consuming alcohol has been retained. Several comments suggested that this paragraph be deleted entirely, while others supported its retention or suggested increasing the hours of abstinence. Although the imposed period of abstinence cannot guarantee the sobriety of an individual, it will limit the ability to assume a watch or duties after drinking, while not entirely prohibiting moderate consumption of alcohol, such as with meals. Violation of this section will not be a violation of 46 U.S.C. 2302(c), but could subject an individual to other administrative actions such as suspension or revocation proceedings against a Coast Guard issued license, certificate, or document.

The issue of whether those crewmembers not actually "operating" a commercial vessel in the traditional sense of the word should be allowed to be intoxicated has been previously discussed. For those reasons, § 95.045 remains unchanged.

The issue of prescription drug use was raised by several comments. After careful consideration, § 95.045 has been revised to read, "A crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew: * * * (d) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to be intoxicated." It is realized that any drug may have side effects possibly resulting in intoxication and that a physician may not know how a certain drug will affect a particular individual. The individual taking a drug has the knowledge of its effects, and a supervisor or others can witness the effects. Therefore, the regulation has been revised to put the responsibility for compliance primarily on the individual. While this section specifically applies to inspected vessels, persons operating uninspected vessels must ensure they are not intoxicated due to the use of legal drugs.

The paragraph dealing with crew shortages and reporting requirements has been deleted. Since only an administrative or judicial proceeding can determine if an individual is intoxicated, a marine employer would not have timely knowledge whether or not they had complied with this section. The removal of this section, however, does not diminish the responsibility of the vessel's crew or marine employer to observe crewmembers actions and take appropriate action to prevent intoxicated personnel from operating a vessel.

16. Prohibitions for vessels subject to any manning requirement under Part F of Title 46, United States Code

This section has been entirely deleted since it is redundant.

17. Penalties

The paragraph dealing with penalties for marine employers who permit intoxicated individuals to remain in their employ has been deleted. Since only an administrative or judicial hearing can determine if an individual is intoxicated, a marine employer would be subject to penalty "after the fact" if they unwittingly continued to use personnel that are later proven to have been intoxicated. Instead, § 95.050 has been revised to include a duty to prohibit an intoxicated individual from standing a watch or performing duties, but only when the marine employer has reason to believe the individual is intoxicated.

46 CFR Part 4—Marine Casualties and Investigations

18. Alcohol or Drug Use by Individuals Directly Involved in Marine Casualties

A number of commenters objected to the proposed requirement for the owner, managing operator, charterer, master, or person in charge of a vessel to "determine" when there is any alcohol or drug involvement by persons directly involved in reportable marine casualties. The commenters feel that the determination of alcohol or drug use, or of intoxication, is a function which should be conducted by qualified law enforcement personnel, not by the marine employer. The Coast Guard agrees, and further recognizes that the ultimate responsibility to determine whether an individual used alcohol or drugs, or was intoxicated, most appropriately rests with the person who is authorized to impose sanctions or penalties for such conduct (i.e., a Coast Guard administrative law judge, Coast Guard civil penalty hearing officer, or judge of a Federal District Court). For this reason, this section has been reworded to require the marine employer to determine when there is "evidence" of drug or alcohol use by individuals involved in marine casualties. The proposed requirements concerning documentation of such "evidence", through the submission of Form CG-2692 or through entries in an official log book, have also been reworded accordingly.

Another commenter noted that not all commercial vessels are legally required to carry official log books, and recommended the insertion of the words

"if carried" following the words "official log book" to highlight this distinction. The Coast Guard agrees and the recommended words have been added where appropriate.

46 CFR Part 5—Marine Investigation Regulations—Personnel Action

19. Voluntary Deposits of Licenses, Certificates, or Documents in the Event of Mental or Physical Incompetence

The several comments on this subject were equally split on whether it is or is not appropriate to withhold or reduce remedial action based on an individual's rehabilitation from substance abuse. As indicated in the NPRM of May 23, 1986, the Coast Guard firmly believes that encouraging voluntary rehabilitation efforts of seamen who abuse drugs or alcohol will result in a safer marine industry. At the same time, the Coast Guard continues to take seriously its responsibility under 46 U.S.C. 7704 to revoke a seaman's license, certificate, or document if it is shown at a hearing that the seaman has been convicted of violation of a dangerous drug law, or has been a user of, or addicted to, dangerous drugs. The Coast Guard feels that the provision to allow a seaman to voluntarily deposit his or her license, certificate, or document in lieu of a hearing, and to not return those papers except under specific circumstances, is an appropriate effort to merge these disparate purposes. Accordingly, the provisions will be retained as proposed.

A number of commenters also addressed the different time periods following rehabilitation after which a license or document may be returned to a seaman (i.e., no time limit following alcohol rehabilitation, a minimum of 6 months following drug rehabilitation). Because drug-related activity is illegal, and because of the provisions of 46 U.S.C. 7704, the Coast Guard feels that a more stringent standard must be applied to the drug abuser to demonstrate that he or she is "cured." Accordingly, this provision will be retained as proposed.

Regulatory Evaluation

The Coast Guard has reviewed this final rule under Executive Order 12291 and has determined that it is not a major regulation.

The original proposal was considered a significant regulation under the Department of Transportation guidelines because it was likely to be controversial. The comments received have supported that conclusion. Although the proposal was modified in response to the comments received, some controversy may remain. Accordingly, the final rule remains classified as a significant regulation. As modified, it is not expected to have a significant economic impact. A regulatory impact analysis is not required; however, a final evaluation has been prepared and has been included in the public docket. A copy of the final evaluation may be obtained from: Commandant (G-CMC/21), (CGD 84-099), U.S. Coast Guard, Washington, DC 20593-0001.

It is expected that this rule will reduce the risk to the lives and safety of the boating public and commercial operators that is caused by intoxicated operation of vessels. The existence of the rule should deter a person from operating a recreational vessel while intoxicated due to publicity that the law is now enforceable. Experience with seat belt laws and usage is a corollary. In 1982, only 11 percent of drivers nationwide used seat belts while 89 percent went unprotected. In 1987, after a publicity campaign directed at motorists and enactment of seatbelt laws in 29 states and the District of Columbia, the use of seat belts had risen to 42 percent nationwide (58 percent unprotected). In other words, the number of people who had previously elected to engage in unsafe behavior decreased 35 percent as a result of Federal and State action. If the Coast Guard regulations and publicity campaign achieved similar results, recreational boating accidents and commercial marine casualties involving alcohol or drugs could be reduced by 35 percent. The benefits to society of such a reduction could be $46.1 million to $209.9 million. Experience with educational campaigns addressing intoxicated operation of motor vehicles has also shown reductions in accidents. An extensive education campaign and State BAC laws have reduced the number of intoxicated drivers involved in fatal accidents from 30 percent to 25 percent, a 16.7 percent reduction. A comparable reduction in recreational boating accidents and commercial marine casualties involving alcohol or drugs could yield benefits to society of $21.9 million to $100.2 million. Although the exact number of accidents involving alcohol or drugs prevented cannot be accurately predicted, it is expected this rulemaking will reduce the number of casualties and cost to society. By either of the above cost reduction estimates, the benefit/cost ratio is very favorable. Moreover, if this regulation, as an opening wedge, can reduce alcohol related recreational boating accident and commercial marine casualty costs by just 1 percent, its benefits will have exceeded its modest costs. Compliance with these rules will not impose any cost or burden on persons operating a recreational vessel or commercial vessel except for those operators who regard becoming intoxicated as a privilege. The Coast Guard believes the probable benefits of reasonable limits on drinking far outweigh the burden imposed. It is also hoped that the rule will encourage State legislatures to strengthen their present laws in this area.

Paperwork Reduction Act

The rules in this document revise information collection requirements in 46 CFR Part 4 and 33 CFR Part 173. The Office of Management and Budget (OMB) has approved the information collection currently required. Control number OMB-2115-0003 has been assigned for casualty reports and control number OMB-2115-0010 has been assigned for boating accident reports. Although the report forms are being changed to reflect specific alcohol or drug involvement in casualties, this is considered merely a clarification of existing reporting requirements and a minor change to the reporting burden.

This rule will not require any major expenditures by the maritime industry, consumers, Federal, State, or local governments. Additionally, the Coast Guard has reviewed this rule under the Regulatory Flexibility Act (Pub. L. 98-354) and certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects

33 CFR Part 95

Marine safety, Vessels, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 146

Continental Shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 150

Deepwater ports, Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 173

Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 177

Marine safety, Recreational vessels, Unsafe conditions, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, National Transportation

Safety Board, Reporting requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seaman, License, Certificate, Document, Rehabilitation, Administrative hearings, Suspension and revocation, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 26

Marine safety, Penalties, Reporting requirements, Vessels, Navigation (water), Passenger vessels, Fishing vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 35

Cargo vessels, Marine safety, Seaman, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Passenger vessels, Penalties, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 109

Continental Shelf, Oil and gas exploration, Marine safety, Marine resources, Reporting requirements, Vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 167

Fire prevention, Reporting requirements, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 185

Marine safety, Passenger vessel, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 196

Marine safety, Oceanographic vessel, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 197

Diving, Marine safety, Occupational safety and health, Vessels, Alcohol and alcoholic beverages, Drugs.

Final Rule

In consideration of the foregoing, the Coast Guard amends Chapter 1 of Title 33, Code of Federal Regulations and Chapter 1 of Title 46, Code of Federal Regulations as set forth below:

TITLE 33—[AMENDED]

1. A new Subchapter F—Vessel Operating Regulations is added to read as follows:

SUBCHAPTER F—VESSEL OPERATING REGULATIONS

PART 95—OPERATING A VESSEL WHILE INTOXICATED

Sec.

Authority: 46 U.S.C. 2302, 3306, and 7701; 49 CFR 1.46.

§ 95.001 Purpose.

(a) The purpose of this part is to establish intoxication standards under 46 U.S.C. 2302 and to prescribe restrictions and responsibilities for personnel on vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code. This part does not pre-empt enforcement by a State of its applicable laws and regulations concerning operating a recreational vessel while intoxicated.

(b) Nothing in this part shall be construed as limiting the authority of a vessel's marine employer to limit or prohibit the use or possession of alcohol on board a vessel.

§ 95.005 Applicability.

(a) This part is applicable to a vessel (except those excluded by 46 U.S.C. 2109) operated on waters subject to the jurisdiction of the United States, and to a vessel owned in the United States on the high seas. This includes a foreign vessel operated on waters subject to jurisdiction of the United States.

(b) This part is also applicable at all times to vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.

§ 95.010 Definition of terms as used in this part.

"Alcohol" means any form or derivative of ethyl alcohol (ethanol).

"Alcohol concentration" means either grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

"Chemical test" means a test which analyzes an individual's breath, blood, urine, saliva and/or other bodily fluids or tissues for evidence of drug or alcohol use.

"Controlled substance" has the same meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I throught V as they may be revised from time to time (21 CFR 1308).

"Drug" means any substance (other tha alcohol) that has known mind or function-altering effects on a person, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

"Intoxicant" means any form of alcohol, drug or combination thereof.

"Law enforcement officer" means a Coast Guard commissioned, warrant, or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or local law.

"Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

"Recreational vessel" means a vessel meeting the definition in 46 U.S.C. 2101(25) that is then being used only for pleasure.

"Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

"Vessel" includes every description of watercraft of other artificial contrivance used, or capable of being used, as a means of transportation on water.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

§ 95.015 Operating a vessel.

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.

(b) The individual is a crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

§ 95.020 Standard of intoxication.

An individual is intoxicated when:

(a) The individual is operating a recreational vessel and has an alcohol concentration of .10 percent by weight or more in their blood;

(b) The individual is operating a vessel other than a recreational vessel and has an alcohol concentrarion of .04 percent by weight or more in their blood; or,

(c) The individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

§ 95.025 Adoption of State standards.

(a) This section applies to recreational vessels on waters within the geographical boundaries of a State having a statute defining a percentage of alcohol in the blood for the purposes of establishing that a person operating a vessel is intoxicated or impaired due to alcohol.

(b) If the applicable State statute establishing a standard for determining impairment due to alcohol uses the terms "under the influence," "operating while impaired," or equivalent terminology and does not separately define a percentage of alcohol in the blood for the purpose of establishing "intoxication," the standard containing the highest defined percentage of alcohol in the blood applies in lieu of the standard in § 95.020(a). If the applicable State statute contains a standard specifically applicable to establishing intoxication, in addition to standards applicable to other degrees of impairment, the standard specifically applicable to establishing intoxication applies in lieu of the standard in § 95.020(a).

(c) For the purposes of this part, a standard established by State statute and adopted under this section is applicable to the operation of any recreational vessel on waters within the geographical boundaries of the State.

§ 95.030 Evidence of intoxication.

Acceptable evidence of intoxication includes, but is not limited to:

(a) Personal observation of an individual's manner, disposition, speech, muscular movement, general appearance, or behavior; and,

(b) A chemical test.

§ 95.035 Reasonable cause for directing a chemical test.

(a) Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. Reasonable cause exists when:

(1) The individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code, or

(2) The Individual is suspected of being in violation of the standards in §§ 95.020 or 95.025.

(b) When an individual is directed to undergo a chemical test, the individual to be tested must be informed of that fact and directed to undergo a test as soon as is practicable.

(c) When practicable, a marine employer should base a determination of the existence of reasonable cause, under paragraph (a)(2) of this section, on observation by two persons.

§ 95.040 Refusal to submit to testing.

(a) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be intoxicated.

(b) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by the marine employer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding.

§ 95.045 General operating rules for vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.

While on board a vessel inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code, a crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew:

(a) Shall not perform or attempt to perform any scheduled duties within four hours of consuming any alcohol;

(b) Shall not be intoxicated at any time;

(c) Shall not consume any intoxicant while on watch or duty; and

(d) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to be intoxicated.

§ 95.050 Responsibility for compliance.

(a) The marine employer shall exercise due diligence to assure compliance with the applicable provisions of this part.

(b) If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not allow that individual to stand watch or perform other duties.

§ 95.055 Penalties.

An individual who is intoxicated when operating a vessel in violation of 46 U.S.C. 2302(c), shall be:

(a) Liable to the United States Government for a civil penalty of not more than $1,000; or,

(b) Fined not more than $5,000, imprisoned for not more than one year, or both.

PART 146—[AMENDED]

2. The authority citation for Part 146 continues to read as follows:

Authority: 43 U.S.C 1333(d)(1), 1347, 1348; 49 CFR 1.46(z).

3. Section 146.35 is amended by adding a new paragraph (a)(7) to read as follows:

§ 146.35 Written report of casualty.

(a) * * *

(7) Includes information relating to alcohol or drug involvement as specified in the vessel casualty reporting requirements of 46 CFR 4.05–12.

* * * * *

PART 150—[AMENDED]

4. The authority citation for Part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1509(a)(b); 49 CFR 1.46.

5. Section 150.711 is amended by adding a new paragraph (b)(9) to read as follows:

§ 150.711 Casualty or accident.

* * * * *

(b) * * *

(9) The vessel casualty reporting requirements relating to alcohol or drug involvement as specified in the vessel casualty reporting requirements of 46 CFR 4.05–12.

* * * * *

PART 173—[AMENDED]

6. The authority citation for Part 173 is revised to read as follows and all other authority citations within this part are removed:

Authority: 46 U.S.C. 6101 and 12121; 49 CFR 1.46(n)(1).

§ 173.51 Applicability.

7. In § 173.51 paragraph (b) is revised to read as follows:

* * * * *

(b) This subpart does not apply to a vessel subject to inspection under Title 46 U.S.C. Chapter 33.

8. In § 173.57 paragraph (v) is revised to read as follows:

§ 173.57 Casualty or accident report.

* * * * *

(v) The opinion of the person making the report as to the cause of the casualty, including whether or not alcohol or drugs, or both, was a cause or contributed to causing the casualty.

* * * * *

PART 177—[AMENDED]

9. The authority citation for Part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46(n)(1).

10. Section 177.01 is amended by revising the introductory text to read as follows:

§ 177.01 Purpose and applicability.

This part prescribes rules to implement section 4308 of Title 46 United States Code which governs the corrections of especially hazardous conditions on recreational vessels and uninspected passenger vessels on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas, except operators of:

* * * * *

§ 177.03 [AMENDED]

11. Section 177.03 is amended by removing and reserving paragraph (a).

12. Section 177.05 is amended by revising the introductory text to read as follows:

§ 177.05 Action to correct an especially hazardous condition.

An operator of a boat who is directed by a Coast Guard Boarding Officer to take immediate and reasonable steps necessary for the safety of those aboard the vessel, under section 4308 of Title 46, United States Code, shall follow the direction of the Coast Guard Boarding Officer, which may include direction to:

* * * * *

13. Section 177.07 is amended by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 177.07 Other unsafe conditions.

For the purpose of section 4308 of Title 46, United States Code, "other unsafe condition" means a boat:

* * * * *

(b) That is operated by an individual who is apparently intoxicated, as defined in § 95.020 of this chapter, to the extent that, in the boarding officer's discretion, the continued operation of the vessel would create an unsafe condition.

(c) Has a fuel leakage from either the fuel system or engine, or has an accumulation of fuel in the bilges.

* * * * *

TITLE 46 [AMENDED]

PART 4—[AMENDED]

14. The authority citation for Part 4 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46(b) and (z), except subpart 4.40 for which the authority is 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46(n)(10)(i).

15. Subpart 4.03 is amended by adding §§ 4.03–35, 4.03–45, 4.03–50, and 4.03–55 to read as follows:

§ 4.03–35 Nuclear vessel.

The term "nuclear vessel" means any vessel in which power for propulsion, or for any other purpose, is derived from nuclear energy; or any vessel handling or processing substantial amounts of radioactive material other than as cargo.

§ 4.03–45 Marine employer.

"Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

§ 4.03–50 Recreational vessel.

"Recreational vessel" means a vessel meeting the definition in 46 U.S.C. 2101(25) that is then being used only for pleasure.

§ 4.03–55 Law enforcement officer.

"Law enforcement officer" means a Coast Guard commissioned, warrant or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or local law.

16. Subpart 4.05 is amended by revising § 4.05–10 and adding §§ 4.05–12 and 4.05–35 and to read as follows:

Subpart 4.05—Notice of Marine Casualty and Voyage Records

* * * * *

§ 4.05–10 Written report of marine casualty.

(a) In addition to the notice required by § 4.05–1, the marine employer shall, within five days, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or the nearest port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 4.05–1.

§ 4.05–12 Alcohol or drug use by individuals directly involved in casualties.

(a) For each marine casualty required to be reported by § 4.05–10, the marine employer shall determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty.

(b) The marine employer shall include in the written report, Form CG–2692, submitted for the casualty information which:

(1) Identifies those individuals for whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained; and,

(2) Specifies the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.

(c) An entry shall be made in the official log book, if carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual must be informed of this entry and the entry must be witnessed by a second person.

(d) If an individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a law enforcement officer or by the marine employer, this fact shall be noted in the official log book, if carried, and in the written report (Form CG–2692), and shall be admissible as evidence in any administrative proceeding.

§ 4.05–35 Incidents involving nuclear vessels.

The master of any nuclear vessel shall immediately inform the Commandant in the event of any accident or casualty to the nuclear vessel which may lead to an environmental hazard. The master shall also immediately inform the competent governmental authority of the country in whose waters the vessel may be or whose waters the vessel approaches in a damaged condition.

PART 5—[AMENDED]

17. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7310, 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

18. Subpart E is amended by revising § 5.201 and adding § 5.205 to read as follows:

Subpart E—Deposit or Surrender of License, Certificate, or Document

§ 5.201 Voluntary deposits in event of mental or physical incompetence.

(a) A holder may deposit a license, certificate, or document with the Coast Guard in any case where there is evidence of mental or physical incompetence. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the conditions upon which the Coast Guard will return the license, certificate, or document to the holder.

(b) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use of or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bona fide drug abuse rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty,

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State or local government investigation; and

(4) The holder has not voluntarily deposited or surrendered a license, certificate, or document, or had a license, certificate, or document revoked for a drug related offense on a prior occasion.

(c) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bona fide alcohol abuse rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender such license, certificate, or document in accordance with § 5.203.

§ 5.205 Return or issuance of a license, certificate of registry, or merchant mariners document.

(a) A person may request the return of a voluntarily deposited license, certificate, or document at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of a license, certificate, or document.

(b) Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bona fide drug abuse rehabilitation program;

(2) Demonstrates complete non-association with dangerous drugs for a minimum of six months after completion of the rehabilitation program; and

(3) Is actively participating in a bona fide drug abuse monitoring program.

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bona fide alcohol abuse rehabilitation program; and

(2) Is actively participating in a bona fide alcohol abuse monitoring program.

(d) The voluntary surrender of a license, certificate, or document is the equivalent of revocation of such papers. A holder who voluntarily surrenders a license, certificate, or document must comply with provisions of §§ 5.901 and 5.903 when applying for the issuance of a new license, certificate, or document.

19. Subpart L is amended by adding paragraphs (d), (e) and (f) to § 5.901 to read as follows:

Subpart L—Issuance of New Licenses, Certificates, or Documents After Revocation or Surrender

§ 5.901 Time limitations.

* * * * *

(d) For a person whose license, certificate, or document has been revoked or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant upon a showing that the individual:

(1) Has successfully completed a bona fide drug abuse rehabilitation program;

(2) Has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program and;

(3) Is actively participating in a bona fide drug abuse monitoring program.

(e) For a person whose license, certificate or document has been revoked or surrendered for offenses related to alcohol abuse, the waiting period may be waived by the Commandant upon a showing that the individual has successfully completed a bona fide alcohol abuse rehabilitation program and is actively participating in a bona fide alcohol abuse monitoring program.

(f) The waivers specified under subparagraphs (d) or (e) of this section may only be granted once to each person.

PART 26—[AMENDED]

20. The authority citation for Subpart 26.08 is revised to read as follows:

Authority: 46 U.S.C. 6101; 46 CFR 1.46(b)

21. Subpart 26.08 is revised to read as follows:

Subpart 26.08—Notice and Reporting of Casualty and Voyage Records

§ 26.08-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this Chapter.

PART 35—[AMENDED]

22. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

23. Subpart 35.15 is revised to read as follows:

Subpart 35.15—Notice and Reporting of Casualty and Voyage Records

§ 35.15-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this Chapter.

PART 78—[AMENDED]

24. The authority citation for Subpart 78.07 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.48(b).

25. Subpart 78.07 is revised to read as follows:

Subpart 78.07—Notice and Reporting of Casualty and Voyage Records

§ 78.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 97—[AMENDED]

26. The authority citation for Part 97 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

27. Subpart 97.07 is revised to read as follows:

Subpart 97.07—Notice and Reporting of Casualty and Voyage Records

§ 97.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 109—[AMENDED]

28. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306. 46 App. U.S.C. 86: 49 CFR 1.46 and (n)(6).

29. Subpart D of Part 109 is amended by removing §§ 109.413 and 109.417 and revising § 109.411 to read as follows:

§ 109.411 Notice and reporting of casualty

The requirements for providing notice and reporting of marine casualties are contained in Part 4 of this chapter.

PART 167—[AMENDED]

30. The authority citation for Part 167 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

31. Section 167.65–65 is revised to read as follows:

§ 107.65-65 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 185—[AMENDED]

32. The authority citation for Part 185 is revised to read as follows and all other authority citations in the Part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

33. Subpart 185.15 is revised to read as follows:

Subpart 185.15—Notice and Reporting of Casualty and Voyage Records

§ 185.15-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 196—[AMENDED]

34. The authority citation for Part 196 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

35. Subpart 196.07 is revised to read as follows:

Subpart 196.07—Notice and Reporting of Casualty and Voyage Records

§ 196.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 197—[AMENDED]

36. The authority citation for Part 197 is revised to read as follows:

Authority: 33 U.S.C. 1509(b); 43 U.S.C. 1333; 46 U.S.C. 3306, 6101; 49 CFR 1.46(b) and (s).

37. Section 197.386 is amended by adding paragraph (d) to read as follows:

§ 197.486 Written report of casualty.

* * * * *

(d) The report required by this section must include information relating to alcohol or drug involvement as required by § 4.05–12 of this chapter.

December 9, 1987.

P.A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 87–28634 Filed 12–11–87; 8:45 am]

BILLING CODE 4910-14-M

Federal Register

Monday
December 14, 1987

Part IV

Department of Education

34 CFR Part 776

Library Career Training Program; Proposed Rule and Notice of Invitation for Applications; New Awards for Fiscal Year 1988

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations concerning the Library Career Training Program. These regulations are being revised to give the Secretary the flexibility to select priorities for the program. This flexibility will allow the program to be more responsive to the changing areas of need for library training projects. Additionally, these regulations would increase the allowable costs for participants. Finally, the regulations would be written in an improved format and style.

DATE: Comments must be received on or before January 13, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue NW., Washington, DC 20208–1430.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, (202) 357–6315.

SUPPLEMENTARY INFORMATION: The Library Career Training Program awards funds to institutions of higher education and to library organizations or agencies for the purpose of training persons in librarianship. The training takes place through fellowships, institutes, and traineeships. A fellowship is awarded to a person who is or will be enrolled in a graduate or undergraduate program in librarianship. An institute provides persons with skills needed to enter the library and information science field or provides library and information science personnel with an opportunity to strengthen their competencies. A traineeship provides individualized instruction designed to meet the individual needs of mid-level professionals, usually through an internship. In all cases, the award is made to the institution, organization, or agency; they, in turn, select the individual participants.

The regulations presently governing the Library Career Training Program state the focus of the program in terms of objectives. The proposed regulations replace the section on objectives with a broad list of needs from which the Secretary may select priorities for a grant competition each year.

Also, the Secretary is publishing the entire set of program regulations in the format and style now used for other programs.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations affect only large institutions of higher education and public and private non-profit organizations. Also, the regulations are not burdensome and will not have a significant economic impact on any of the institutions affected.

Paperwork Reduction Act of 1980

Sections 776.10, 776.20, 776.21, 776.22, and 776.23 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 402D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 776

Fellowships, scholarships, traineeships, Higher Education Act—library training, Library training, Libraries, Library and information science education, Library training, fellowships, Library training, scholarships, Reporting and recordkeeping requirements.

Dated: October 8, 1987.

(Catalog of Federal Domestic Assistance Number 84.036, Library Career Training)

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 776 of Title 34 of the Code of Federal Regulations to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

Subpart A—General

§ 776.1 What is the Library Career Training Program?

The Secretary awards grants under the Library Career Training Program to—

(a) Train or retrain persons in librarianship through fellowships, institutes, or traineeships; and

(b) Establish, develop, and expand programs of library and information science, including new techniques of information transfer and communication technology.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.2 Who is eligible for an award?

Eligible applicants are—

(a) Institutions of higher education; and

(b) Library organizations and agencies.

(Authority: 20 U.S.C. 1032)

§ 776.3 Who is eligible to participate in a project?

In order to be selected by a grantee as a participant in a project, an individual must—

(a)(1) Be a United States citizen or national;

(2) Provide evidence from the United States Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b) Be engaged in or preparing to engage in a profession or other occupation involving library or information science; and

(c) Meet the selection criteria of the grantee.

(Authority: 20 U.S.C. 1032)

§ 776.4 What activities may the Secretary fund?

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects with funds under this program.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.5 What priorities may the Secretary establish?

(a) The Secretary may give priority to applications that propose one or more of the following:

(1) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

(2) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(3) To increase excellence in library leadership through advanced training in library management.

(4) To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

(5) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities.

(6) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents or rural America.

(b) The Secretary establishes priorities by publishing a notice in the **Federal Register**, in accordance with 34 CFR 75.105.

(Authority: 20 U.S.C. 1032)

§ 776.6 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 776.

(Authority: 20 U.S.C. 1021)

§ 776.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Dependent" means a spouse or other person who receives more than half of his or her support from a participant during the course of a project conducted under this program, or any person identified as a personal exemption on a participant's income tax return for the calendar year preceding the year in which the participant is enrolled in the project.

"Fellowship" means an award of financial assistance to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate or undergraduate program of library and information science, working toward or completing the requirements for a specific degree in some aspect of librarianship.

"Institute" means a specialized long-term or short-term group training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Has an innovative curriculum; and

(3) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their knowledge and skills.

"Institution of higher education" means an institution of higher education as defined in 34 CFR 668.2.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or private organization or agency that provides library services or programs.

"Participant" means a person who is enrolled in a training project funded under this part.

"Pell Grant" means assistance provided under the grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV A-1 of the HEA.

"State agency" means the State agency designated under section 1203 of the Act.

"Traineeship" means a training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Is designed to meet the individual needs of mid-level library and information science professionals; and

(3) Provides individual instruction, usually through an internship.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.8 What is the duration of a project?

(a) A fellowship or long-term institute project must provide at least one academic year but not more than 12 months of training

(b) A short-term institute project must provide at least one week but no more than six weeks of training.

(c) A traineeship project may not exceed 12 months.

(Authority: 20 U.S.C. 1021, 1032)

Subpart B—How Does One Apply for an Award?

§ 776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

(a) An applicant shall submit separate applications for fellowship, institute, and traineeship projects.

(b) An applicant shall submit separate applications for fellowships at the bachelor's, master's, post-master's, and doctoral levels.

(c) An applicant may request any number of fellowships.

(d) An applicant shall specify the amount to be paid to participants as stipends.

(Authority: 20 U.S.C. 1021, 1032)

Subpart C—How Does the Secretary Make an Award?

§ 776.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.21 and awards up to 100 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.22 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.23 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1032)

§ 776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5 (a);

(2) The project objectives are clearly stated, realistic, and satisfy a current training need;

(3) The required courses meet standards that are recognized by the library and information science profession; and

(4) The student field experience component (if included) is well designed.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and insures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of selecting participants, including—

(1) Conformance with program priorities; and

(2) Evidence that admissions standards for participants are comparable to those for other students admitted to the library education program.

(e) *Applicant characteristics.* (20 points) The Secretary reviews each application to determine the applicant's commitment to library and information science education, including—

(1) The adequacy of the description in the applicant's catalog of the specific library education program in which participants will be enrolled;

(2) The extent to which the amount the applicant spends per student for education in librarianship is comparable to that of other education programs;

(3) The extent to which the ratio of degrees awarded to total enrollment in the applicant's library education program is comparable to that of other library education programs;

(4) The extent to which the ratio of requested fellowships to other fellowships and scholarships in librarianship supported by the applicant is comparable to that of other library education programs; and

(5) The extent to which the academic level of the project is appropriate to the applicant's capabilities or experience.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(h) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, and supplies.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.22 What selection criteria does the Secretary use to evaluate an application for an institute?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5 (a);

(2) The subject matter of the project is significant, timely, well described, appropriate for an institute, and is not duplicated in the applicant's regular curriculum;

(3) The project duration is appropriate for presenting the subject matter;

(4) The project content satisfies rigorous educational standards;

(5) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and

(6) The training methods are innovative and imaginative.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participants selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the method of partcipant selection, including the extent to which—

(1) Participants will be selected according to their ability, experience, current responsibilities, and training needs; and

(2) The number of participants is appropriate to the training methods and project resources.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies

(h) *Project effectiveness.* (10 points) The Secretary reviews each application to determine the effectiveness of the project, including the extent to which—

(1) The project will increase the number of librarians with specialized skills;

(2) The project includes plans for disseminating promising results and high quality materials to other institutions or agencies.

(Authority: 20 U.S.C. 1032)

§ 776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

(a) *Project description.* (15 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The training needs to be met by the project are significant, of current interest to the library and information science community, and well described;

(3) Project activities are designed to meet the individual needs of each participant; and

(4) Other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel plan to commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of participant selection, including the extent to which participants will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate for the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (15 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1021, 1032)

Subpart D—What Conditions Must Be Met After an Award?

§ 776.30 What are the allowable costs for participants?

(a)(1) A grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:

(i) For each fellowship awarded at the undergraduate level—$2000 for an academic year plus $500 for a summer session.

(ii) For each fellowship awarded at the master's level—$4600 for an academic year plus $800 for a summer session.

(iii) For each fellowship awarded at post-master's and doctoral levels—$6400 for an academic year plus $1000 for a summer session.

(2) A grantee shall use grant funds to pay stipends to fellowship participants in the following amounts:

(i) Undergraduate level—$2000 for an academic year plus $500 for a summer session.

(ii) Master's level—$4600 for an academic year plus $800 for a summer session.

(iii) Post-master's and doctoral level—$6400 for an academic year plus $1000 for a summer session.

(b) A grantee may use grant funds to pay stipends to institute participants in the following amounts:

(1) Long-term, full-time post-baccalaureate level—$4600 for an academic year plus $800 for a summer session.

(2) Long-term, full-time pre-baccalaureate level—$2000 for an academic year, plus $500 for a summer session.

(3) Short-term, full-time—up to $375 per week.

(4) Part-time—up to $75 per day.

(c)(1) The grantee shall use grant funds to provide traineeship training in accordance with the allowable costs of providing training for either fellowships or institutes, whichever is applicable.

(2) The grantee may use grant funds to pay stipends to traineeship participants in accordance with the allowable costs of fellowships or institutes, whichever is applicable.

(d)(1) The Secretary may authorize travel allowances for participants—

(i) In cases of extreme hardship; and

(ii) If travel is necessary for successful participation in the project.

(2) The mileage rate must be consistent with rates applicable to Federal Government employees.

(3) The Secretary may defer authorization of travel allowances until the grantee establishes the need by appropriate documentation.

(e)(1) In cases of extreme hardship, the Secretary may authorize allowances for dependents of participants. The maximum amount that may be provided per dependent is $800 for an academic year, $200 for a summer session, and $50 per week for short-term projects.

(2) The Secretary may defer authorization of allowances for dependents until the grantee has documented need.

(f)(1) The grant award specifies the amount for stipends and dependency and travel allowances.

(2) The grantee shall disburse the stipends and the dependency and travel allowances to the appropriate project participants.

(Authority: 20 U.S.C. 1032)

§ 776.31 What are the restrictions on costs for participants?

A grantee may not charge tuition or fees to a participant in a training project funded under this program.

(Authority: 20 U.S.C. 1032)

§ 776.32 What are the restrictions on stipend levels?

No participant shall receive a stipend under this program that, for any academic year, exceeds that participant's cost of attendance, as defined in section 472 (2) to (9) of the Act, minus the amount of a Pell Grant awarded to the participant.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.33 What requirements govern the removal, withdrawal, and substitution of participants?

(a) A grantee shall remove a participant from a training project if the grantee determines that the participant has ceased to maintain academic proficiency.

(b) If a grantee removes the participant or if a participant withdraws, the grantee—

(1) May replace the participant if the new participant can successfully complete the training at no additional cost to the Department; and

(2)(i) Shall notify the Secretary in writing—

(A) Within 30 days of the removal or withdrawal; or

(B) Within 30 days of a substitution if the grantee substitutes another participant.

(ii) The date of removal or withdrawal is—

(A) The date the grantee determined that the participant had ceased to maintain academic proficiency; or

(B) The last date the participant attended class.

(c)(1) If a grantee removes the participant or if the participant withdraws, the grantee shall prorate the participant's stipend and any allowances, according to the number of the weeks the participant has completed in the project.

(2) For purposes of paragraph (c)(1) of this section, the grantee shall count attendance in any part of a week as a full week.

(d) If a grantee does not substitute a participant for the participant who has been removed or who has withdrawn, the grantee shall return to the Federal Government the unused portion of the stipend and any allowances.

(Authority: 20 U.S.C. 1032)

§ 776.34 What agencies must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall annually inform the agency designated under section 1203 of the Act of its project activities.

(Authority: 20 U.S.C. 1022)

[FR Doc. 87-28678 Filed 12-11-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.036]

Invitation; Applications for New Awards Under the Library Career Training Program for Fiscal Year 1988

Purpose: To train persons in librarianship through fellowships, institutes, and traineeships and to establish, develop, and expand programs of library and information science.

Deadline for Transmittal of Applications: February 18, 1988.

Deadline for Intergovernmental Review Comments: April 18, 1988.

Applications Available: December 28, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for the program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Awards:
Fellowship: $8,000–$60,000
Institutes: $20,000–$150,000

Estimated Number of Awards:
Fellowships—30
Institutes—2 to 5

Projected Period: 12 months.

Priorities: In accordance with § 776.5 of the proposed regulations referenced in this notice, each year the Secretary may select one or more of the program's six priorities and allocate funds to each selected priority. For fiscal year 1988, the Secretary has selected the following priorities:

(a) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities;

(b) To increase excellence in library leadership through advanced training in library management; and

(c) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(d) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

The Secretary plans to allocate up to 30% of the available funds for institutes, if a sufficient number of institute applications warrant funding. The remaining funds will be allocated for fellowships.

Applicable Regulations: (a) Regulations governing the Library Career Training Program as proposed to be codified in 34 CFR Part 776. Applications are being accepted based on the notice of proposed rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications. (b) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens or Yvonne B. Carter, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue NW., Room 402M, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: December 8, 1987.

Chester E. Finn, Jr.

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 87–28679 Filed 12–11–87; 8:45 am]

BILLING CODE 4000–01–M

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7 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

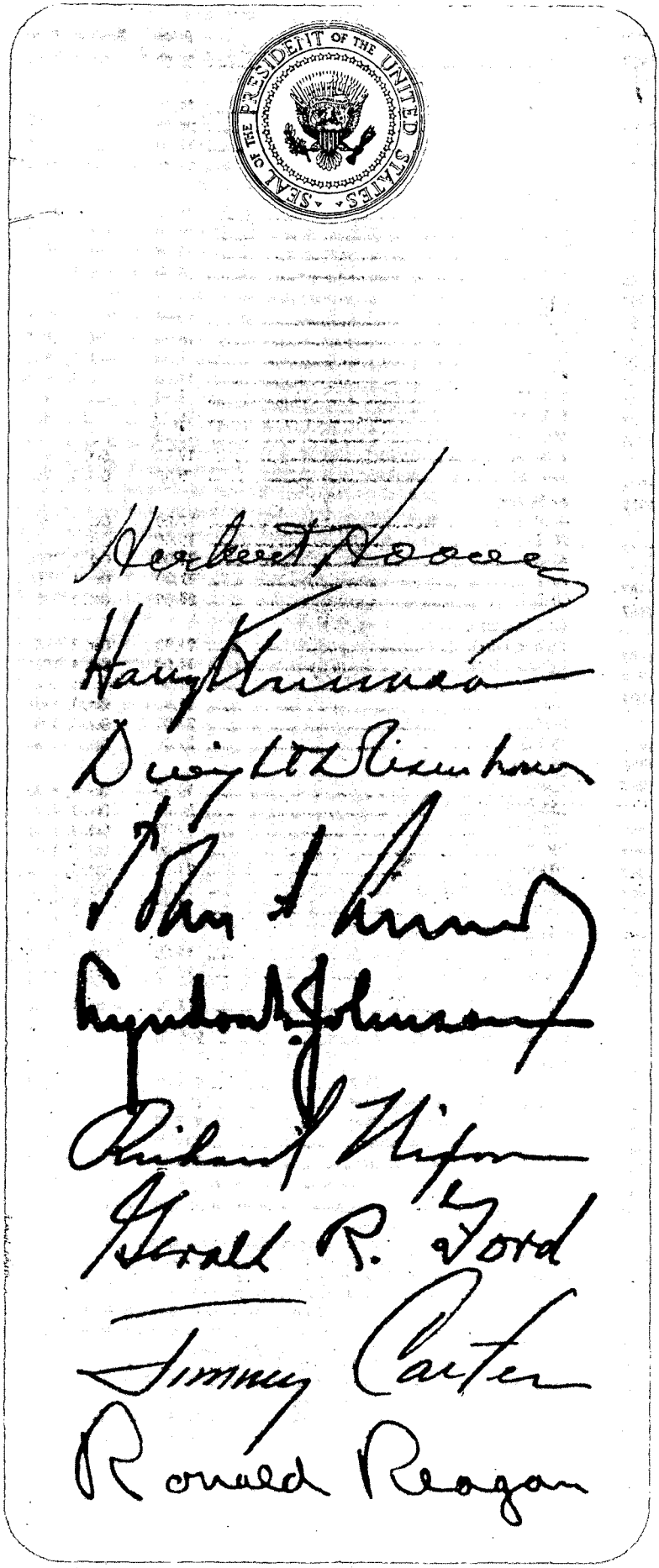
[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.



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